

No. 10398

United States
Circuit Court of Appeals

For the Ninth Circuit.

Vol
2349

UNITED STATES OF AMERICA,

Appellant,

vs.

GORDON T. CAREY, STACEY D. GEORGE,
BETTY GEORGE, WILLIAM J. GEORGE,
EDNA GEORGE, ANNA GEORGE CAREY,
HARRY CAREY, ELIZA A. SHOEMAKER
and E. P. SHOEMAKER,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

FILED

AUG - 2 1943

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD:

CARL C. DONAUGH,
United States Attorney;

J. MASON DILLARD,
Assistant United States Attorney;
U. S. Court House, Portland, Oregon,
for Appellant

JOHN W. McCULLOCH and
EDWIN D. HICKS,
Yeon building, Portland, Oregon,
for Appellees

In the District Court of the United States for the
District of Oregon
March Term, 1935.

Be It Remembered, That on the 14th day of
June, 1935, there was duly filed in the District
Court of the United States for the District of Ore-
gon, a Petition for Condemnation, in words and
figures as follows, to wit: [1*]

And Afterwards, to wit, on the 14th day of June,
1935, there was duly Filed in said Court, a Declar-
ation of Taking, in words and figures as follows,
to wit:

*Page numbering appearing at foot of page of original certified
Transcript of Record.

In the District Court of the United States
For the District of Oregon
No. L-12492

UNITED STATES OF AMERICA,
Petitioner,

vs.

3474.34 ACRES, MORE OR LESS, OF LAND
IN HARNEY COUNTY, OREGON; HAR-
NEY COUNTY, ET AL.

Defendants.

PETITION FOR CONDEMNATION

To the Honorable, the Judges of the United
States District Court for the District of
Oregon:

The Petition of the United States of America, by Carl C. Donough, United States Attorney for the District of Oregon, and Hugh L. Biggs, Assistant United States Attorney, acting under instructions of the Attorney General and at the request of the Secretary of Agriculture, respectfully shows as follows:

1. This petition is filed under the authority and provisions of the Act for the Relief of Unemployment Through the Performance of Useful Public Works, approved March 31, 1933, (48 Stat. 22) and pursuant to Executive Order No. 6724, dated May 28, 1934, authorizing the purchase or rental of land for emergency conservation work. [2]

2. The Secretary of Agriculture has selected for acquisition by the United States the land herein-

after described for use in the construction of useful public works and improvements in connection with the Lake Malheur Migatory Waterfowl Refuge, and for such other uses as may be authorized by Congress or by Executive Order. The said lands are necessary and are required for immediate use, in order that said construction work may be begun. In the opinion of the Secretary of Agriculture it is necessary, advantageous and in the interests of the United States that said lands be acquired by judicial proceeding as authorized by Act of Congress approved August 1, 1888 (25 Stat. 357; 40 USCA 257, 258).

3. The lands sought to be acquired in this proceeding are described as follows:

Lake Malheur Reservation Extension Tracts
3474.34 acres, more or less, in
Harney County, Oregon

The Harney County Tract (No. 4)—Lots 1, 4 and 5, Sec. 8 and Lot 2, Sec. 9, T. 27 S., R. 30 E.-W.M., containing 123.47 acres, more or less valued at \$493.88.

The Harney County Tract (No. 4a)—Lot 7, NW- $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$, Sec. 28; Lot 3 and SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 29; Lots 2, 3, 4 and N $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, and SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 32; T. 26 S., R. 31 E.W.M. (North of Malheur Lake), containing 550.15 acres, more or less, valued at \$2200.60.

The Harney County Tract (No. 4b)—E $\frac{1}{2}$ of NE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ Lot 5, Sec. 19, T. 25 S., R. 33 E.W.M., containing 33.75 acres more or less, valued at \$135.00.

The Harney County Tract (No. 4c)—SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 27, T. 25 S., R. 33 E.W.M., containing 40.00 acres, more or less, valued at \$160.00.

The Harney County Tract (No. 4d)—Lot 13, Sec. 34, T. 25 S., A. 33 E.W.M., containing 35.10 acres, more or less, valued at \$140.00.

The Harney County Tract (No. 4e)—Lots 1, 3 and 4 and S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 16, T. 26 S., R. 33 E.W.M., containing 312.48 acres, more or less, valued at \$1249.92.

The Lavina Griffin Tract (No. 6)—Lots 1 and 2 (more particularly described as the SE $\frac{1}{4}$ NE $\frac{1}{4}$), and Lots 3, 4, 5 and 6, Sec. 28, T. 26 S., R. 31 E.W.M. (North of Malheur Lake), containing 129.17 acres, more or less, valued at \$1130.24.

The Gerald Griffin Tract (No. 7,a)—Lots 1, 2 and 6, Sec. 13, and all that tract or parcel of land lying East of the middle subdivision line of Sec. 13 of Lot 5, Sec. 13, T. 26 S., R. 31 E.W.M. (North of Malheur Lake), containing 69.33 acres, more or less, valued at \$606.64.

The Leona Creason and A. Creason Tract (No. 10)—Lots 3 and 4, and all of Lot 5 west of north and south center line of Sec. 13, about 34.14 acres; and S $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 13; Lots 7 and 8 and SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 14; Lot 1, and NW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 23, and Lots 1 and 2, Sec. 24, T. 26 S., R. 31 E.W.M. (North of Malheur Lake), containing 437.06 acres, more or less, valued at \$4479.87.

The Leona Creason and A. Creason Tract (No. 10a)—Lots 1, 2, 3, 4, 7, 8, 9 and 10, Sec. 25, T. 26 S., R. 30 E.W.M. (South of Malheur Lake); Lots

4, 5, 11, 12, 13 and 14, Sec. 30, T. 26 S., R. 31 E.W.M. (South of Malheur Lake), containing 242.05 acres, more or less, valued at \$2481.01.

The John Creasman Tract (No. 12)—Lots 3, 6, 7, Sec. 18, T. 26 S., R. 32 E.W.M. (North of Malheur Lake), containing 80.38 acres, more or less, valued at \$964.56.

The Horace M. Horton Tract (No. 14,a,b)—Lot 11, Sec. 4; Lot 6, Sec. 8; Lot 1, Sec. 10, T. 26 S., R. 32 E.W.M. (North of Malheur Lake), containing 44.57 acres, more or less, valued at \$445.70. [4]

The Mary A. George Tract (No. 16)—Lots 1, 2 and 3, Sec. 1; Lots 1, 2, 6, 7, 8, and 9, Sec. 2, T. 26 S., R. 32 E.W.M. (North of Malheur Lake), containing 177.38 acres, more or less, valued at \$2128.56.

The H. L. Bechtel Tract (No. 26)—Lots 5, 7 and 8, Sec. 23; Lots 1 and 2, Sec. 26, T. 25 S., R. 32 $\frac{1}{2}$ E.W.M., containing 161.24 acres, more or less, valued at \$1773.64.

The James Thompson and Gordon T. Cary Tract (No. 31,a)—Lots 8 and 10 and W $\frac{1}{2}$ of Lot 5, Sec. 19, T. 25 S., R. 33 E.W.M., containing 46.67 acres, more or less, valued at \$326.69.

The Maggie C. Catterson Tract (No. 33)—Lots 9, 10, 11 and 12, Sec. 20; Lots 1, 2, 3, 4, 5 and 6, Sec. 29, T. 25 S., R. 33 E.W.M., containing 176.73 acres, more or less, valued at \$1413.84.

The Thomas T. Dunn Tract (No. 39,a)—Lot 4, Sec. 28; Lots 3 and 4, Sec. 32; Lots 9, 10 and 12, Sec. 33, T. 26 S., R. 32 E.W.M., (South of Malheur

Lake), containing 147.47 acres, more or less, valued at \$1511.57.

The W. J. Clarke (known as Joe Kado Place) Tract (No. 41)—Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12; S $\frac{1}{2}$ SW $\frac{1}{4}$; W $\frac{1}{2}$ NW $\frac{1}{4}$; SE $\frac{1}{4}$ NW $\frac{1}{4}$; NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 36, T. 26 S., R. 31 E.W.M., (South of Malheur Lake), containing 506.46 acres, more or less, valued at \$9003.34.

The Albert Hembree Tract (No. 49)—Lots 5, 6 and 11, Sec. 25; Lots 1, 3, 4 and 5, Sec. 26, T. 26 S., R. 30 E.W.M. (South of Malheur Lake), containing 139.28 acres, more or less, valued at \$1392.80.

The Laura A. Dickenson Tract (No. 50)—Lot 4, Sec. 34, T. 26 S., R. 30 E.W.M. (South of Malheur Lake), containing 21.60 acres, more or less, valued at \$189.00.

And together therewith all right, title claim and interest of the owners of said tracts to lands lying within the Neal survey lines purporting to surround Malheur and Mud Lakes, and the Narrows.

4. The estate taken in the said lands is the full fee simple title thereto subject only to existing public highways and public utility easements. [5]

5. As to the Harney County Tract (No. 4a), the Commissioners of Harney County executed an agreement to convey the said lands to the United States at \$4.00 per acre on October 8, 1934. This agreement was entered into by the Secretary of Agriculture on December 26, 1934. The Government's abstract covering this tract was submitted to the Attorney General, and the title offered was not approved. It appears from said abstract that

the following named parties may have some right, title, claim, or interest, and they are made defendants: Harney County, Oregon; C. A. Haines, Lyman F. Smith; Lyman Franklin Smith; State Land Board; The First National Bank of Burns; Alexander McKenzie Heirs; Selenia Elliott; the Heirs of Henderson Elliott; R. L. Hutton; Cortes Elliott, Administrator; Leona Hutton; Earle C. Miller, Trustee; Oregon Oil Company; and John Anderson.

As to the Harney County Tracts (Nos. 4b, c, d), the Commissioners of Harney County executed an agreement to convey the said lands to the United States at \$4.00 per acre on October 8, 1934. This agreement was entered into by the Secretary of Agriculture on December 26, 1934. The Government's abstract covering these tracts was submitted to the Attorney General, and the title offered was not approved. It appears from said abstract that the following named parties may have some right, title, claim or interest, and they are made defendants: Harney County, Oregon; Ora S. Hayes; O. Scott Hayes; Othniel E. Hayes; Izora M. Hayes; First National Bank of Burns; and the Federal Farm Loan Association.

As to the Harney County Tract (No. 4e), the Commissioners of Harney County executed an agreement to convey the said lands to the United States at \$4.00 per acre on October 8, 1934. This agreement [6] was entered into by the Secretary of Agriculture on December 26, 1934. The Government's abstract covering this tract was sub-

mitted to the Attorney General, and the title offered was not approved. It appears from said abstract that the following named parties may have some right, title, claim, or interest, and they are made defendants: Harney County, Oregon; Fred Haines; James F. Mahon estate; Lucy R. Mahon; Ira J. Mahon; Verda M. Mahon; Emily F. McMahon; Pearl R. Smyth; and Earle C. Miller, Trustee.

As to the Harney County tract (No. 4), the commissioners of Harney County executed an agreement to convey the said lands to the United States at \$4.00 per acre on October 8, 1934. The agreement was entered into by the Secretary of Agriculture on December 26, 1934. The Government's abstract covering this tract was submitted to the Attorney General, and the title offered was not approved. It appears from said abstract that the following named parties may have some right, title, claim, or interest, and they are made defendants: The Harney County, Oregon; Myrtle (Haines) Caldwell; Dora Belle Chapman; Arthur L. Akers; First National Bank of Burns; H. D. Meyer, M.D.; J. M. Yoes; I. L. Hamilton; V. T. McCray; Anna Post; J. C. Turney; J. M. Locher; Homer Denman; Charles Frye; Peter Cramer; N. A. Dibble; Peter Clemens; the heirs of Armenious C. Lynch; Loretta F. Meyer; and E. G. Kolbe.

As to the Lavina Griffin tract (No. 6), Lavina Griffin and Leslie Griffin, her husband, executed an agreement to convey said land to the United States at \$8.75 per acre on September 14, 1934. This

agreement was entered into by the Secretary of Agriculture on December 26, 1934. The [7] Government's abstract covering this tract was submitted to the Attorney General, and the title offered was conditionally approved, subject to the release or extinguishment of oil and gas lease dated August 1, 1929, recorded in Miscellaneous Book C, page 144, Harney County records in favor of Earle C. Miller, Trustee and assigned to Oregon Oil Company on November 30, 1929. It appears from said abstract that the following named parties may have some possible right, title, claim, or interest in this tract, and they are made defendants, namely; Lavina Griffin and her husband Leslie Griffin of Narrows, Oregon; Wellington G. Howell; W. G. Howell; Selonia Elliott; R. L. Hutton; Earle C. Miller, Trustee; Oregon Oil Company;

As to Gerald Griffin Tracts (No. 7,a), Leslie Griffin and Lavina Griffin, his wife, Narrows, Oregon; Mary Griffin and Francis Griffin, Burns, Oregon; the heirs of Gerald Griffin, deceased, executed agreements to convey the said tract to the United States at \$8.75 per acre. These agreements were entered into by the Secretary of Agriculture on February 7, 1935, and the said vendors are made defendants hereto, but there remain outstanding the undivided interests of other heirs of Gerald Griffin from whom agreements have not been obtained. It appears from the Government's abstract covering these tracts that the following named parties may have some right, title, claim, or interest, and they are made defendants, namely: Gerald

Griffin, Spokane, Washington; Edwin R. Griffin, Narrows, Oregon; the heirs of Gerald Griffin, deceased. [8]

As to the Leona Creason and A. Creason tracts. (Nos. 10 and 10 a). Leona Creason, widow, executed an agreement to convey the said lands to the United States at \$10.25 per acre on October 3, 1934. This agreement was entered into by the Secretary of Agriculture on January 9, 1935. The Government's abstract covering this tract was submitted to the Attorney General, and the title was approved conditionally, subject to (1) evidence of the death of Alvess Creason and the administration and settlement of his estate; (2) release of leasehold by Myrtle Caldwell; (3) proof that A. Creason and Alvess Creason is one and the same person. According to the Government's abstract the following named parties may have some right, title, claim, or interest in this tract, and they are made defendants; Leona Creason, 720 North Jackson, Roseburg, Oregon; the unknown heirs of A. Creason, also known as Alvess Creason, and Myrtle Caldwell.

As to the John Creasman tract, (No. 12), Walla Creasman and Lucy Creasman, his wife, 1615 Fourth Street, La Grande, Oregon; Mrs. Edith Steele, Route 3, Union, Oregon, heirs of John Creasman, deceased, executed agreements to convey their undivided interests in said tract to the United States at \$12.00 per acre, and these agreements were entered into by the Secretary of Agriculture on January 9, 1935, and the said vendors

are made defendants hereto; but there remain outstanding the undivided one-third interest of Marguarite Creasman, widow, and devisee of John Creasman, Jr., deceased, he being one of the three heirs of John Creasman, Sr., deceased, from whom an agreement has not been obtained. [9]

According to the Government's abstract the following named parties may have some right, title, claim, or interest in this tract, and they are made defendants hereto: Marguarite Creasman; Marguarite Grout and her husband, of Burns, Oregon.

As to the Horace M. Horton Tracts (Nos. 14, a, b), according to the County records, Horace M. Horton is the record owner of these lands, but he is dead and appears to have left a will, not probated, leaving these tracts to his widow for life and then to his two grandchildren whose names are unknown. Mrs. Horace M. Horton, widow, has expressed her willingness to sell this land to the United States at \$10.00 per acre but she is not willing to bear the cost of an action to sell grandchildren's land and to administer her late husband's estate. According to the Government's abstract, the following named parties may have some right, title, claim or interest in this tract and they are made defendants: Mrs. Horace M. Horton, of Cherryville, Oregon; Mervin H. Horton, and his two children, whose names are unknown, 6075 Franklin Avenue, Hollywood, California; and other unknown heirs of Horace M. Horton, deceased; and the Pacific Live Stock Company.

As to the Mary A. George Tract (No. 16), agreements have been executed by Elbert F. George,

John Day, Oregon; Henry A. George and Lucille George, his wife, Mount Vernon, Oregon; Lee R. George, Mount Vernon, Oregon; Walter P. George and Echo George, his wife, John Day, Oregon, heirs of Mary A. George and Adam F. B. George, both deceased, to convey to the United States their undivided interests in this tract at \$12.00 per acre. These agreements were entered into by the Secretary of Agriculture on February 7, 1935, and these vendors are made defendants hereto; but there remain outstanding the undivided interests of the [10] other heirs from whom agreements to convey have not been obtained. According to the Government's abstract the following named parties may have some right, title, claim, or interest in this tract, and they are made defendants: Georgia E. George of Corvallis, Oregon, the widow; Raymond L. George, and Clifford E. George, of Monroe, Oregon; Julian A. George; Mary A. George; William J. George; Anna Garry of Crane, Oregon; Eliza O. Shoemaker of Lindsay, California; Stacy D. George of Klamath Falls, Oregon; Harney Valley Irrigation District; Harney County National Bank; and J. E. Graves.

As to the H. L. Bechtel Tract (No. 26), H. L. Bechtel, unmarried, executed an agreement to convey the said tract to the United States at \$11.00 per acre on November 2, 1934. This agreement was entered into by the Secretary of Agriculture on December 26, 1934. The Government's abstract covering this tract was submitted to the Attorney General, and the title offered was conditionally ap-

proved, subject (1) to release of a mortgage in favor of the State Land Board, dated July 15, 1921, recorded at Mortgage Book 1, page 198, Harney County records, to secure \$600.00; (2) release of a mortgage in favor of the State Land Board, dated June 24, 1931, to secure \$400.00 recorded at Mortgage Record M. Page 308 of Harney County records; and (3) release or extinguishment of oil and gas lease to Earle C. Miller, Trustee, dated July 8, 1929, recorded at Miscellaneous Book C, page 79, [11] Harney County records, and transferred to Oregon Oil Company November 30, 1929. According to the Government's abstract the following named parties may have some right, title, claim, or interest in this tract, and they are made defendants: H. L. Bechtel or Harry L. Bechtel of Preston, Oregon; Earle C. Miller, Trustee; Oregon Oil Company; and Grant Thompson, tenant.

As to the James Thompson and Gordon T. Cary Tracts, (No. 31,a) James Thompson and his wife executed an agreement to convey their undivided one-half interest in this tract to the United States at \$7.00 per acre on October 23, 1934. This agreement was entered into by the Secretary of Agriculture on February 7, 1935, but there remain outstanding the undivided one-half interest of Gordon T. Cary from whom an agreement to sell has not been obtained. According to the Government's abstract the following named parties may have some right, title, claim, or interest in this tract, and they are made defendants: James Thompson and Emma Thompson his wife, of Red-

mond, Oregon; Gordon T. Cary, of Burns, Oregon; Rose Denman; Dr. H. D. Denman; Rebecca A. Cary; C. T. Cary; Clarence T. Cary; Effie A. Cary; Earle C. Miller, Trustee; and Oregon Oil Company.

As to the Maggie C. Catterson Tract (No. 33), Maggie C. Catterson, widow of William A. Catterson, deceased, executed an agreement to convey this tract to the United States at \$8.00 per acre on November 1, 1934. This agreement was entered into by the Secretary of Agriculture on December 26, 1934. The Government's [12] abstract covering this tract was submitted to the Attorney General and the title offered was conditionally approved, subject to release of the following mortgages in favor of Harney County National Bank; a mortgage dated July 14, 1921, (Mortgage Record I, page 212); a mortgage dated November 10, 1922, (Mortgage Record J, page 95); a mortgage dated May 10, 1923, (Mortgage Record J, page 96); a mortgage dated February 20, 1924, (Mortgage Record J, page 278); a mortgage dated December 9, 1924, (Mortgage Record J, page 458); a mortgage dated April 5, 1926, (Mortgage Record K, page 161); a mortgage dated April 19 1927, (Mortgage Record K, page 480); a mortgage dated November 4, 1927, (Mortgage Record L, page 35); a mortgage dated November 19, 1928, (Mortgage Record L page 246); a mortgage dated October 24, 1929, (Mortgage Record L. page 464), in Harney County Records, (2) evidence showing the administration and settlement of the estate of William A. Catter-

son who died June 23, 1930. According to the Government's abstract the following named parties may have some right, title, claim, or interest in this tract, and they are made defendants: Maggie C. Catterson, widow of William A. Catterson, deceased, Burns, Oregon; the unknown heirs, legatees, demisees and creditors of William A. Catterson; The Harney County National Bank.

As to the Thomas T. Dunn Tracts (No. 39,a), Thomas T. Dunn executed an agreement to convey this tract to the United States at \$10.25 per acre on December 6, 1934. This agreement was entered into by the Secretary of Agriculture on January 9, 1935. The [13] Government's abstract covering this land was submitted to the Attorney General, and the title offered was conditionally approved, subject to the release or extinguishment of oil and gas lease from T. T. Dunn to Earle C. Miller, Trustee, dated December 3, 1928, recorded in Miscellaneous Book C, page 115, and transferred on November 30, 1929 to Oregon Oil Company; also oil and gas lease from Mrs. M. A. Dunn to Earle C. Miller, Trustee, dated December 3, 1928, recorded in Miscellaneous Book C, page 24, and transferred and assigned to Oregon Oil Company on November 30, 1929. According to the Government's abstract the following named parties may have some right, title, claim or interest in this tract, and they are made defendants: Thomas T. Dunn of Crane, Oregon; Ted Dunn; Thomas Tedy Dunn; T. T. Dunn; Earle C. Miller, Trustee; Oregon Oil Company; John W. Biggs; the heirs of P. F.

Dunn; Union No. 1 Gas and Oil Mining Association.

As to the W. J. Clarke (Joe Kado Place) Tract (No. 41), W. J. Clarke and Dorothy Dora Clarke, his wife, executed an agreement to convey this tract to the United States at \$17.777 per acre on December 8, 1934. This agreement was entered into by the Secretary of Agriculture on December 29, 1934. According to the Government's abstract the following named parties may have some right, title, claim or interest in this tract and they are made defendants: W. J. Clark and Dorothy Dora Clark, his wife, of Redding, California; Sarah E. Kado; Sarah Kado; the unknown heirs of Joe Kado; William A. Harris; Henry Fairlee and his wife, Minnie Fairlee; L. O. Lakin; Earle C. Miller, Trustee; Oregon Oil Co.; Elvin Marshall; F. F. Lusk; German Saving and Loan Society. [14]

As to the Albert Hembree Tract (No. 49), Guy L. Hembree and Ura E. Hembree, his wife, of Klamath Falls, Oregon; Minnie E. Wooley and J. C. Wooley, her husband, of Harrisburg, Oregon; Ann E. Hamilton, of Enterprise, Oregon; Mary Alice Simmons, of 349 Matilda Street, Sunnyvale, California; Rose E. McGrath and George T. McGrath, her husband, of 1032 Washington Street, Hillsboro, Oregon; George T. McGrath and Rose E. McGrath, his wife, Hillsboro, Oregon; John L. Hembree, of Grants Pass, Oregon; and Emma A. M. Waterman, 4792 Panorama Drive, San Diego, California, all of them the heirs of Albert Hembree, de-

ceased, executed agreements to convey their interest in this tract to the United States at \$10.00 per acre. These agreements were entered into by the Secretary of Agriculture on February 6, 1935, and these vendors are made defendants hereto, but there remain outstanding the undivided interests of Eugene E. Hembree and Loren C. Hembree from whom purchase agreements have not been obtained, and they are made defendants.

As to the Laura A. Dickenson Tract (No. 50), Nellie D. Miller and Clarence Miller, her husband, of French Glenn, Oregon; Maxine Bailey and Tom Bailey, her husband, of French Glenn, Oregon; Laura Rose Mattingly and Bud Mattingly, her husband, of Rockville, Oregon; J. C. Syme and Anna E. Syme, his wife, of Parma, Idaho, heirs of Laura A. Dickenson, deceased, have executed agreements to convey their interests in this tract to the United States at \$8.75 per acre. These agreements were entered into by the Secretary of Agriculture on January 9, 1935, and the said vendors are made defendants hereto. The Government's abstract covering this tract was submitted to the Attorney General, and the title offered was conditionally [15] approved, subject to a showing as to the death of Laura A. Dickenson, and that her estate was properly administered; and that the parties signing these agreements are the sole and only heirs of said Laura A. Dickenson, deceased. According to the Government's abstract the following named parties may have some possible right, title, claim or interest in this tract, and they are made defendants: the

unknown heirs of Laura A. Dickenson; the heirs of Edward Dickenson, deceased; the heirs of Stella Dickenson, deceased, and the heirs of Roy Dickenson, deceased. [16] 6. All and singular the heirs, husbands, wives, devisees, executors, administrators, representatives, alienees, successors, assigns of each and every of the above named persons, firms and corporations; and all unknown owners, lienors and claimants having or claiming any right, title, estate, equity, interest or lien; and all occupants, lessees, licensees and users and holders and owners of or claimants to easements in, on, over, across or through said lands; and all persons, companies and corporations claiming any title or interest to or in any of said tracts of land; are made parties defendant to the end that they may come into Court and by proper pleadings make claim to said lands, or to the proceeds arising therefrom.

7. Simultaneously with the filing of this petition there is also to be filed a Declaration of Taking estimating the just compensation to be paid for the lands herein described. Shortly thereafter this estimated award will be paid into the registry of this Court under the provisions of the Declaration of Taking Act of Congress approved February 26, 1931, (46 Stat. 1421; 40 USCA 258a).

8. Wherefore, your petitioner prays: (a) That this Court pass an order reciting the filing of the Declaration and Petition herein, and the payment of the estimated just compensation for the taking of said land, and the effect thereof as to the vesting of title in the United States and the right to just

compensation in those entitled thereto, and directing that immediate possession of said land be delivered and taken; (b) that this Honorable Court will take jurisdiction of this cause, and will make and have entered all such orders, judgments and decrees as may be necessary to bring all of the known owners of said land before this Court, and to make all unknown parties having any interest therein parties defendant [17] hereto, and will appoint commissioners to appraise and fix the value of said lands and the amount of compensation, and all such other and further orders, judgments and decrees as may be necessary to vest said lands in fee simple absolute in the United States of America, and make just distribution of the estimated and final award among those entitled thereto as expeditiously as possible.

UNITED STATES OF
AMERICA

By CARL C. DONAUGH

United States Attorney for
the District of Oregon.

HUGH L. BIGGS

Assistant United States
Attorney.

(Duly verified by Hugh L. Biggs.)

[Endorsed]: Filed June 14, 1935. [18]

United States of America, In the District Court of
the United States for the District of Oregon.

No. L-12492.

IN THE MATTER OF THE ACQUISITION BY
THE UNITED STATES OF AMERICA OF
3474.34 ACRES, MORE OR LESS, OF LAND
IN HARNEY COUNTY, OREGON.

DECLARATION OF TAKING.

I, M. L. Wilson, Acting Secretary of Agriculture of the United States, acting in such capacity, and duly authorized by the provisions of the Act for the Relief of Unemployment through the Performance of Useful Public Works, approved March 31, 1933, (48 Stat. 22), do hereby make and cause to be filed this Declaration of Taking, under and in accordance with the Act of Congress approved February 26, 1931, (46 Stat. 1421; 40 USCA 258a) and Acts supplementary thereto and amendatory thereof, and declare that: (1) Under Executive Order No. 6724, dated May 28, 1934, authorizing the purchase or rental of land for emergency conservation work, the Secretary of Agriculture has selected for acquisition by the United States the lands hereinafter described for use in the construction of useful public works and improvements in connection with the establishment of the Lake Malheur Reservation Extension in Harney County, Oregon, and for such other uses as may be authorized by Congress or by Executive Order. The said lands are necessary and are required for immediate use

and in the opinion of the Secretary of Agriculture it is necessary, advantageous and in the interests of the United States that said lands be acquired by judicial proceeding as authorized by Act of Congress approved August 1, 1888 (25 Stat. 357; 40 USCA 257, 258), (2) a general description of the lands taken together with the estimated value of each tract follows: [20]

[Here follows the same description found in paragraph 3 of the petition.]

(3) the estate taken for said public uses is the fee simple title thereto subject only to existing public highways, and public utility easements, if any; (4) a plat showing the lands taken is annexed hereto as Schedule A, and made a part hereof; (5) the sum estimated by me as just compensation for said lands, with all buildings and improvements thereon and all appurtenances thereto, and including any and all interests whatsoever in said tracts, excepting only existing highways and public utility easements, if any, is Thirty-two Thousand Two Hundred Twenty-seven Dollars and Twenty-six cents, which sum is hereby deposited into the Registry of this Honorable Court for the use and benefit of the persons entitled thereto.

In my opinion the ultimate award for said lands will probably be within the total amount authorized under Executive Order No. 6724.

In Witness Whereof, I have signed this Declaration and caused the Seal of the Department of Agriculture to be hereto affixed on this 27th day of

March, 1935, at Washington in the District of Columbia.

Secretary's File Room.

[Seal] M. L. WILSON (Signed)

Acting Secretary of Agriculture
of the United States of
America.

(Department of Agriculture)

[Endorsed]: Filed June 14, 1935. [23]

And Afterwards, to wit, on Friday, the 14th day of June, 1935, the same being the 83rd Judicial day of the Regular March, 1935, Term of said Court; present the Honorable John H. McNary, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [25]

In the District Court of the United States
For the District of Oregon
No. L-12492

UNITED STATES OF AMERICA,

Petitioner,

vs.

3473.34 ACRES, MORE OR LESS, OF LAND IN
HARNEY COUNTY, OREGON; HARNEY
COUNTY, ET AL.,

Defendants.

JUDGMENT ON THE DECLARATION OF
TAKING.

This cause coming on to be heard at this term of

Court upon the motion of the petitioner, the United States of America, to enter a judgment on the Declaration of Taking filed in the above-entitled cause on June 14, 1935, and for an order fixing the date when possession of the property herein described is to be surrendered to the United States of America, and upon consideration thereof and of the condemnation petition filed herein, said Declaration of Taking, the statutes in such cases made and provided and the Executive Orders of the President of the United States made pursuant to the authority contained in the Act of Congress approved March 31, 1933 (48 Stat. 22; 16 USCA 585), and It Appearing to the satisfaction of the Court;

First: That the United States of America is entitled to acquire property by eminent domain for the purposes as set out and prayed in said petition;

Second: That a petition in condemnation was filed at the request of the Secretary of Agriculture, the authority empowered by law to acquire the lands described in said petition, and also under authority of the Attorney General of the United States;

Third: That said petition and Declaration of Taking state the authority under which, and the public use for which said lands were taken; that the Secretary of Agriculture is the person duly [26] authorized and empowered by law to acquire lands such as are described in the petition for the purpose of the Lake Malheur Reservation Extension Project as stated in said Declaration, and that the Attorney General of the United States is the person

authorized by law to direct the institution of such condemnation proceedings;

Fourth: That a proper description of the land sought to be taken, sufficient for identification thereof, is set out in said Declaration of Taking;

Fifth: That said Declaration of Taking contains a statement of the estate or interest in the said lands taken for said public use;

Sixth: That a plat showing the lands taken is incorporated in said Declaration of Taking;

Seventh: That a statement is contained in said Declaration of Taking of a sum of money, estimated by said acquiring authority to be just compensation for said lands, in the amount of \$32,227.26, and that said sum was deposited in the Registry of this Court, for the use of the persons entitled thereto, upon and at the time of the filing of the said Declaration of Taking;

Eighth: That a statement is contained in said Declaration of Taking that the amount of the ultimate award of compensation, for the taking of said property, in the opinion of the said Secretary of Agriculture, will be within any limits prescribed by Congress as to the price to be paid therefor; it is therefore, this 14th day of June, 1935,

Adjudged, Ordered and Decreed that the title to the following described lands [27]

[Here follows the same description found in paragraph 3 of the petition.]

~~(3) the estate taken for said public uses is the fee simple title thereto subject only to existing public highways, and public utility easements, if any; (4)~~

~~a plat showing the lands taken is annexed hereto as Schedule A, and made a part hereof; (5) the sum estimated by me as just compensation for said lands, with all buildings and improvements thereon and all appurtenances thereto, and including any and all interests whatsoever in said tracts, excepting only existing highways and public utility easements, if any, is Thirty-two Thousand Two Hundred Twenty-seven Dollars and Twenty-six cents, which sum is hereby deposited into the Registry of this Honorable Court for the use and benefit of the persons entitled thereto.~~

In my opinion the ultimate award for said lands will probably be within the total amount authorized under Executive Order No. 6724.

In Witness Whereof, I have signed this Declaration and caused the Seal of the Department of Agriculture to be hereto affixed on this 27th day of March, 1935, at Washington in the District of Columbia.

Secretary's File Room.

(Signed) M. L. WILSON

Acting Secretary of Agriculture
of the United States of
America. [30]

in fee simple, subject to existing public highways and public utility easements, if any, vested in the United States of America upon the filing of said Declaration of Taking and the depositing in the Registry of this Court of the said sum of \$32,227.26, as hereinabove recited, on the 14th day of June, 1935, at two o'clock, P.M.; that said lands are

deemed to have been taken for the use of the United States of America; and the right to just compensation for the property taken vested in the persons entitled thereto; and the amount of compensation shall be ascertained and awarded in this proceeding and established by judgment herein pursuant to law, and

It Is Further Adjudged, Ordered and Decreed that the possession of the above-described property shall be delivered to the United States of America on or before the 15th day of July, 1935, and this cause is held open for such other and further orders, judgments and decrees as may be necessary in the premises.

Done and dated at Portland, Oregon, this 14th day of June, 1935.

JOHN H. McNARY

United States District Judge.

[Endorsed]: Filed June 14, 1935. [31]

And Afterwards, to wit, on the 19th day of July, 1935, there was duly Filed in said Court, a Supplemental Petition for Condemnation in words and figures as follows, to wit: [32]

[Title of District Court and Cause.]

SUPPLEMENT TO PETITION FOR
CONDEMNATION

To the Honorable, the Judges of the United States District Court for the District of Oregon, comes

now the United States of America, the petitioner herein by Carl C. Donough, United States Attorney for the District of Oregon, and Hugh L. Biggs, Assistant United States Attorney for the District of Oregon, and having first obtained permission of the Court so to do does hereby file this its Supplement to the Petition for Condemnation which said Petition for Condemnation was filed in the above entitled Court on the fourteenth day of June, 1935, and alleges and represents to the Court as follows:

1. That since the filing of the original petition herein the government's abstracts of title to the lands described in said original petition have been completed and examined, and that it appears from an examination of said abstracts of title and an independent investigation thereof that, in addition to the defendants named in the petition on file herein, the following named persons, firms, associations and corporations have, or may have, some right, title, interest, easement, or right of way, in, to, upon or across the lands described in the Petition for Condemnation on file herein, and they are therefore made defendants in this cause to be served with process and to be required to answer or *or* otherwise plead or suffer themselves to be held in default herein. That the names of said additional defendants and lands or portions thereof in which they have or [33] may have some interest as aforesaid, is as follows, to-wit:

Harney County Tract (No. 4)—Lots 1, 4 and 5, Sec. 8 and Lot 2, Sec. 9, T. 27 S., R. 30 E.W.M.,

containing 123.47 acres, more or less, valued at \$493.88 by the Secretary of Agriculture. Additional Defendants are Herbert W. Champneys, Receiver of the First National Bank of Burns, a national banking association; E. G. Kelbe; and Fred Haines.

Harney County Tracts: No. 4B—E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ Lot 5, Sec. 19, T. 25 S., R. 33 E.W.M., containing 33.75 acres more or less, valued at \$135.00 by the Secretary of Agriculture; No. 4C—SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 27, T. 25 S., R. 33 E.W.M. containing 40.00 acres, more or less, valued at \$160.00 by the Secretary of Agriculture; No. 4D—Lot 13, Sec. 34, T. 25 S., R. 33 E.W.M., containing 35.10 acres, more or less, valued at \$140.40 by the Secretary of Agriculture. Additional defendants are Herbert W. Champneys, Receiver of the First National Bank of Burns, a national banking association; Lucy Mahon; Emily F. McMahan; Pearl Smythe; Fred Haines; Earle C. Miller, Trustee; Ira J. Mahon, in his own proper person; and Ira J. Mahon as executor of the estate of James F. Mahon, deceased.

Harney County Tract (No. 4E)—Lots 1, 3 and 4 and S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 16, T. 26 S., R. 33 E.W.M., containing 312.48 acres, more or less, valued at \$1249.92 by the Secretary of Agriculture. Additional defendants are Henry W. Welcome; Myrtle Caldwell, formerly Myrtle Curtis; Dora Belle Chapman, formerly Dora Belle Curtis, and her husband Charles W. Chapman.

Gerald Griffin Tract (No. 7A)—Lots 1, 2 and 6,

Sec. 13, and all that tract or parcel of land lying East of the middle subdivision line of Sec. 13 of Lot 5, Sec. 13, T. 26 S., R. 31 E.W.M. (North of Malheur Lake), containing 69.33 acres, more or less, valued at \$606.64 by the Secretary of Agriculture. Additional defendants are State Land Board of Oregon; Harney County, Oregon; R. Louie Rasmussen and Sophie Rasmussen. [34]

Leona Creason and A. Creason Tract (No. 10 and 10A) Lots 3 and 4, and all of Lot 5 west of north and south center line of Sec. 13, about 34.14 acres; and S $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 13; Lots 7 and 8 and SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ and SE $\frac{1}{4}$, Sec. 14; Lot 1, and NW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 23, and Lots 1 and 2, Sec. 24, T. 26 S., R. 31 E.W.M. (North of Malheur Lake), containing 437.06 acres, more or less, valued at \$4479.87 by the Secretary of Agriculture; and Lots 1, 2, 3, 4, 7, 8, 9 and 10, Sec. 25, T. 26 S., R. 30 E.W.M. (South of Malheur Lake); Lots 4, 5, 11, 12, 13 and 14, Sec. 30, T. 26 S., R. 31 E.W.M. (South of Malheur Lake), containing 242.05 acres, more or less, valued at \$2481.01 by the Secretary of Agriculture. Additional defendants are Leona Creason, executrix of the estate of Alvess Creason, deceased; the unknown wife of Adam Robin if married on June 4, 1900; the unknown wife of William H. Robin, if married on April 1, 1901; Harry Rudsill.

John Creasman Tract (No. 12)—Lots 3, 6, 7, Sec. 18, T. 26 S., R. 32 E.W.M. (North of Malheur Lake), containing 80.38 acres, more or less, valued at \$964.56 by the Secretary of Agriculture. Addi-

tional defendants are Frank Steele, husband of Mrs. Edith Steel; Frank Grout, husband of Marguerite Grout; and Bernice Creasman, a minor.

Horace M. Horton Tract (No. 14, A & B)—Lot 11, Sec. 4; Lot 6, Sec. 8, Lot 1, Sec. 10, T. 26 S., R. 32 E.W.M. (North of Malheur Lake), containing 44.57 acres, more or less, valued at \$445.70 by the Secretary of Agriculture. Additional defendants are Maude Horton, widow of Horace M. Horton, deceased, in her own proper person; and Maude Horton, executrix of the estate of Horace M. Horton, deceased; Jean Horton, a minor; and Bill Horton, a minor.

Mary A. George Tract (No. 16)—Lots 1, 2 and 3, Sec. 1; Lots 1, 2, 6, 7, 8 and 9, Sec. 2, T. 26 S., R. 32 E.W.M. (North of Malheur Lake), containing 177.38 acres, more or less, valued at \$2128.56 by the Secretary of Agriculture. Additional defendants are Edna George, wife of William J. George; Anna Cary and Harry Cary, her husband; E. O. Shoemaker, husband of Eliza A. Shoemaker; Betty George, wife of Stacy D. George; Edith Graves, wife of J. E. Graves. [35]

H. L. Bechtel Tract (No. 26)—Lots 5, 7, and 8, Sec. 23; Lots 1, and 2, Sec. 26, T. 25 S., R. 32½ E.W.M., containing 161.24 acres, more or less, valued at \$1773.64 by the Secretary of Agriculture. Additional defendants are Henry L. Bechtel; State Land Board of Oregon; Calvin Clemmens.

James Thompson and Gordon T. Cary Tract (No. 31, A)—Lots 8 and 10 and W½ of Lot 5, Sec. 19, T. 25 S., R. 33 E.W.M., containing 46.67 acres, more

or less, valued at \$326.69 by the Secretary of Agriculture. Additional defendant is Lucy Mahon.

W. J. Clarke (known as Joe Kado Place) Tract (No. 41)—Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12; S $\frac{1}{2}$ SW $\frac{1}{4}$; W $\frac{1}{2}$ NW $\frac{1}{4}$; SE $\frac{1}{4}$ NW $\frac{1}{4}$; NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 36, T. 26 S., R. 31 E.W.M., (South of Malheur Lake), containing 506.46 acres, more or less, valued at \$9003.34 by the Secretary of Agriculture. Additional defendants are Katie Harris, wife of William A. Harris; Eastern Oregon Livestock Company, a corporation; Jim Gibson; the unknown wife of Illario Pastoral, if married on April 29, 1886.

Albert Hembree Tract (No. 49)—Lots 5, 6 and 11, Sec. 25; Lots 1, 3, 4, and 5, Sec. 26, T. 26 S., R. 30 E.W.M. (South of Malheur Lake), containing 139.28 acres, more or less, valued at \$1392.80 by the Secretary of Agriculture. Additional defendants are Blanche Moamau, and unknown husband of Blanche Moamau; Bryan Hamilton, husband of Annie Hamilton; Linnie Hembree, widow of Lorane C. Hembree, deceased; and the unknown heirs at law and the next of kin of Lorane C. Hembree; all of them the heirs of Albert Hembree, deceased.

The following named defendants are minors: Bernice Creasman, Jean Horton and Bill Horton. There may be other unknown persons who are minors, insane or otherwise incompetent for which reason the appointment of a guardian ad litem may be necessary for said minors and for all other defendants who are minors, insane or otherwise incompetent.

The prayer of original Petition is hereby renewed as to the additional defendants named herein.

UNITED STATES OF
AMERICA

By CARL C. DONAUGH

United States Attorney for
the District of Oregon.

HUGH L. BIGGS

Assistant United States Attorney. [36]
(Duly verified by Hugh L. Biggs.)

[Endorsed]: Filed July 19, 1935. [37]

And Afterwards, to wit, on the 9th day of September, 1935, there was duly filed in said Court, a Motion of Gordon T. Carey to Make Petition More Definite and Certain, in words and figures as follows, to wit: [38]

[Title of District Court and Cause.]

MOTION OF GORDON T. CAREY, ET AL, TO
MAKE MORE DEFINITE

Comes now Gordon T. Carey (erroneously spelled Gordon T. Cary), one of the defendants named in the above entitled suit and being the owner of an undivided one half of what is referred to in the Petition for Condemnation filed herein as James Thompson and Gordon T. Cary Tract (No. 31,a), and the defendants Georgia E. George, Raymond L. George, Clifford E. George, William J. George and Edna George, his

wife, Anna Carey (erroneously name in said petition as "Anna Garry" and Harry A. Carey, her husband, Eliza O. Shoemaker and E. O. Shoemaker, her husband, Stacy D. George and Betty M. George, his wife, defendants named in the above entitled Petition for Condemnation filed by the Government herein and being claimants to undivided interests in what is referred to in said petition as the Mary A. George Tract (No. 16), and move the Court for an Order requiring the Petitioner to make more definite and certain and more particular that portion of its said Petition on page 4 thereof reading:

"And together therewith all right, title, claim and interest of the owners of said tracts to lands lying within the Neal survey lines purporting to surround Malheur and Mud Lakes, and the Narrows,"

by requiring the United States of America to set forth and particularize what area within the Neal survey lines and in front of said Mary A. George tract (No. 16) and the James Thompson and Gordon T. Carey Tract (No. 31,a) the said Petitioner is seeking to acquire by condemnation proceedings herein.

L. A. LILJEQVIST

Attorney and Solicitor for Defendants above named,

Residence and Business Address, American Bank Building, Marshfield, Oregon. [39]

State of Oregon

County of Coos—ss.

I, L. A. Liljeqvist, do hereby certify that I am attorney for the defendants above named, and have prepared the foregoing Motion; that the same is

made in good faith and not for the purpose of delay, and in my judgment is well taken as a matter of law.

L. A. LILJEQVIST

Service of the within motion is accepted this 9th day of September, 1935.

CARL C. DONAUGH

United States Attorney

Attorney for Petitioner.

[Endorsed]: Filed September 9, 1935. [40]

And Afterwards, to wit, on Monday, the 25th day of January, 1937, the same being the 66th Judicial day of the Regular November, 1936, Term of said Court; present the Honorable James Alger Fee, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [41]

[Title of District Court and Cause.]

ORDER OF SEVERANCE AS TO
GORDON T. CAREY, ET AL.

Now at This Time this matter coming on for an order of severance upon stipulation of the parties orally made in open court, the parties hereto appearing by J. Mason Dillard, of counsel for plaintiff, and L. A. Liljeqvist, counsel for Gordon T. Carey, and Rebecca Carey not appearing either in person or by counsel but being merely a nominal party defendant hereto and having heretofore made and entered no appearance in said proceeding, that an order of severance be taken as to said defendants and an undivided one-half interest in and to the following described real property:

Lots Eight (8) and Ten (10) and the West One-Half ($W\frac{1}{2}$) of Lot Five (5), Section Nineteen (19), Township Twenty-five (25) South, Range Thirty-three (33) East, Willamette Meridian, containing 46.67 acres.

and for leave on the part of plaintiff to file an amended petition herein as against the above named defendants and the above-described real property, excluding therefrom any and all portions of said above-described real property lying within the Neal Survey Line as described in the original and supplemental petition herein, the court at this time, being fully advised in the premises, makes the following order: [42]

It Is Hereby Ordered that severance be had in the above-entitled action as to said above-named defendants and an undivided one-half interest in the said above-described real property, and that leave be, and it is hereby granted, to plaintiff herein to file an amended petition as against said defendants and said above-described real property, excluding therefrom, however, any and all portions of said real property lying within the Neal Survey Line.

Done and dated at Portland, Oregon, this 25th day of January, 1937.

JAMES ALGER FEE

Judge

Approved:

L. A. LILJEQVIST

Attorney for Gordon T. Carey.

[Endorsed]: Filed January 25, 1937. [43]

And Afterwards, to wit, on Monday, the 25th day of January, 1937, the same being the 66th Judicial day of the Regular November, 1936, Term of said Court; present the Honorable James Alger Fee, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [44]
[Title of District Court and Cause.]

ORDER OF SEVERANCE AS TO
WILLIAM J. GEORGE, ET AL

Now at This Time this matter coming on for an order of severance upon stipulation of the parties orally made in open court, the parties hereto appearing by J. Mason Dillard, of counsel for plaintiff, and L. A. Liljeqvist, counsel for William J. George and Edna George, his wife; Anna Carey and Harry Carey, her husband; Eliza O. Shoemaker and E. O. Shoemaker, her husband; and Stacy D. George and Betty E. George his wife, that an order of severance be taken as to said defendants and an undivided four-ninths interest in and to the following described real property:

Lots One (1), Two (2) and Three (3) Section One (1); Lots One (1), Two (2), Six (6), Seven (7), Eight (8) and Nine (9), Section Two (2), Township Twenty-six (26) South, Range Two (2) East, Willamette Meridian, north of Malheur Lake, containing 177.38 acres, more or less.
and for leave on the part of plaintiff to file an amended petition herein as against the above-named defendants and the above-described real property, excluding therefrom any and all portions of said

above-described real property lying within the Neal Survey Line as described in the original and supplemental petition herein, the court at this time, being fully advised in the premises, makes the following order: [45]

It Is Hereby Ordered that severance be had in the above-entitled action as to said above named defendants and an undivided four-ninths interest in the said above-described real property, and that leave be, and it is hereby granted, to plaintiff herein to file an amended petition as against said defendants and said above described real property, excluding therefrom, however, any and all portions of said real property lying within the Neal Survey Line.

Done and dated at Portland, Oregon, this 25th day of January, 1937.

JAMES ALGER FEE

Judge

Approved:

L. E. LILJEQVIST

Attorney for Defendants,

Anna Carey, Harry Carey,

William J. George, Edna

George, Eliza O. Shoemaker,

E. O. Shoemaker, Stacy D.

George, and Betty E. George.

[Endorsed]: Filed January 25, 1937. [46]

And Afterwards, to wit, on the 27th day of January, 1937, there was duly Filed in said Court, an Amended Petition for Condemnation as to Gordon

T. Carey tract, in words and figures as follows, to wit: [47]

[Title of District Court and Cause.]

AMENDED PETITION FOR CONDEMNATION
AS TO GORDON T. CAREY

To the Honorable, the Judges of the United States
District Court for the District of Oregon:

On the 14th day of June, 1935, there was filed in this court a Petition for Condemnation entitled: United States vs. 3474.34 Acres, more or less, of land in Harney County, Oregon, No. 12,492 At Law, including, with other lands, the land hereinafter described; a supplement thereto was filed on July 19, 1935, and on the 25th day of January, 1937, this court permitted the severance of said hereinafter-described tract of land from said proceeding, and permitted the filing of this amended petition for condemnation.

This amended petition of the United States, by Carl C. Donough, United States Attorney for the District of Oregon, respectfully shows that:

1. This petition is filed under the authority and provisions of Acts of Congress entitled: "An Act for the Relief of Unemployment Through the Performance of Useful Public Work, and for Other Purposes", approved March 31, 1933 (Chap. 17, 48 Stat. 22), as continued to March 31, 1937, [48] by Section 14 of the Emergency Relief Appropriation Act for 1935 (Pub. Res.—No. 11—74th Congress); the Fourth Deficiency Act Fiscal Year 1933" (Ch. 100, 48 Stat. 274) and pursuant to Executive Order No.

6724, dated May 28, 1934, authorizing the purchase or rental of land for emergency conservation work.

2. By the Act for the Relief of Unemployment through the Performance of Useful Public Work (48 Stat. 22) Congress declared a three-fold purpose, namely: (a) to relieve the acute condition of widespread distress and unemployment; (b) to provide for the restoration of the country's depleted natural resources; and (c) the advancement of an orderly program of useful public works. The President was thereby authorized to utilize existing departments, including the Department of Agriculture, to provide employment in the construction of public works. Congress thereby enumerated several types of work to be done, including (1) forestation of lands; (2) prevention of forest fires; (3) Prevention of floods; (4) prevention of soil erosion; (5) control of plant pests; (6) control of diseases; (7) construction of paths; (8) construction of trails; (9) construction of fire-lanes, and other work of the general character enumerated. The characteristics of the specified types of work, and of other work so authorized to be done, were that they were: (a) to relieve unemployment, (b) to restore depleted natural resources, and (c) to be useful public works. The work was authorized to be done, among other places, in national parks, in national forests, on Government reservations, and upon lands to be acquired by purchase, donation, condemnation, or otherwise. The term "Government Reservation as used in this Act included the Lake Malheur Reservation established by Executive Or-

der No. 929, dated August 18, 1908, located in Harney County in the State of Oregon. [49]

3. Section 2 of this Act (48 Stat. 22) authorized the acquisition of lands, as follows:

“For the purposes of carrying out the provisions of this Act * * * the President, or the head of any department or agency authorized by him to construct any project or to carry on any such public works, shall be authorized to acquire real property by purchase, donation, condemnation, or otherwise, * * * .”

4. Under this Act (48 Stat. 22), and by authority of the President, the Secretary of Agriculture has duly adopted an emergency conservation works project for the improvement of the Lake Malheur Reservation. This project includes the construction of dikes; the building of water-control structures; the conservation of water; the control of flood-waters; the construction of truck trails; food and cover planting; fire protection; and the building of nesting islands to provide additional food and cover for waterfowl. One of the largest dikes being constructed on the Lake Malheur Reservation is the Cole Island Dike, which is essential in order to prevent the spreading out and evaporation of the inadequate supply of available water. This dike is being elevated and a truck trail will be built thereon for *servicing* the control structures and shortening patrol routes. It will be so elevated as to allow the truck trail thereon to be used at all times regardless of flood-water conditions within the Reservation. Approximately 75 miles of additional truck trails are to be

constructed around the exterior boundaries of the Reservation for patrol and fire-prevention purposes. Four lookout towers are to be erected for fire protection and patrol purposes. More than 37 miles of fencing is to be erected and maintained. Open ditches and earth embankments are to be constructed for water-control purposes. Several thousand acres are to be planted with trees, and large areas within the Reservation are to be planted for the production of food and cover for nesting waterfowl. Two emergency conservation works camps have already been established to carry on this work, and approximately 400 men have been and will be employed in the improvement of the Lake Malheur Reservation. This [50] program of improvement is effective to relieve unemployment, restore depleted natural resources, and will result in the construction of useful public works.

5. The tract of land described in paragraph 7 hereof is requisite and necessary to be fully vested in the United States of America, free and clear of all outstanding claims of ownership, for the reason that a part of said emergency conservation work is necessary to be done thereon, or because the said land will be affected thereby. The public use for which said lands now are required is the accomplishment of the emergency conservation works project herein described, but the said lands are also to be used as a part of the Lake Malheur Reservation for the restoration and conservation of migratory birds in furtherance of the objects of the Migratory Bird Treaty (39 Stat. 1702), the Migratory Bird Treaty

Act (40 Stat. 755), the Migratory Bird Conservation Act (46 Stat. 1222), and for such other public uses as may be authorized by Congress or by Executive order.

6. In the opinion of the Secretary of the United States Department of Agriculture it has become necessary and advantageous to the United States Government to acquire all outstanding right, title, claim and interest in and to the land herein described in paragraph 7 by condemnation under judicial process. The Secretary of the United States Department of Agriculture has duly made application to the Attorney General of the United States to commence proceedings for the condemnation of any outstanding right, title, claim, and interest in the land herein described in paragraph 7; the Attorney General of the United States has duly instructed the United States Attorney for the District of Oregon to institute proceedings for the condemnation thereof; and these proceedings are duly brought under instructions from the Department of Justice of the United States, and under the Act of Congress approved [51] August 1, 1888, entitled, "An Act to Authorize the Condemnation of Land for Sites of Public Buildings, and for Other Purposes" (35 Stat. 357) U.S.C.A. 357-358.

7. The property sought to be acquired and appropriated by the United States of America for the purposes aforesaid is described as follows:

"The James Thompson and Gordon T. Carey Tract (No. 31,a)—Lots 8 and 10 and W $\frac{1}{2}$ of

Lot 5, Sec. 19, T. 25 S., R. 33 E.W.M., containing 46.67 acres, more or less, valued at \$326.69.”

Due notice has been given and published as against all claimants to this tract and the only outstanding claimant thereto is Gordon T. Carey, who is made defendant hereto.

8. The property sought to be acquired does not include any rights which the defendant may have or claim as appurtenant to said lands because riparian thereto, and it does not include any rights, title, interest or estate of the defendant to lands or waters inside the Neal Survey lines, claimed by the defendant to be meander lines of “Malheur Lake” as shown by and in accordance with the official plat of said Township 26 South, Range 32 E.W.M. (N.M.L.) as approved by the General Land Office and on file with the Surveyor General; and it also does not include any lands claimed to be relicited lands within the Malheur Lake Division, as described in the United States Supreme Court decree dated June 3, 1935, in re United States vs. Oregon recorded at Book 36, page 546, Harney County, Oregon, records.

9. James Thompson and wife executed an agreement to convey their undivided one-half interest in the lands described in paragraph 7 hereof to the United States at \$7.00 per acre on October 23, 1934. This agreement was entered into by the Secretary of Agriculture on February 7, 1935, but there remained outstanding the undivided one-half interest of Gordon T. Carey from whom an agreement to sell has not been obtained. According to the Government’s abstract Gordon T. Carey may have some

right, title, claim or interest in this tract of land and he is made a defendant [52] hereto. Simultaneously with the filing of the original petition herein there was filed a declaration of taking estimating \$326.69 as the value of the lands described in paragraph 7 hereof. This estimated award was subsequently paid into the Registry of the United States District Court. Under the provisions of the Declaration of Taking Act (46 Stat. 1421) and subsequently, an order for possession was made and entered in the proceeding entitled *United States of America vs. 3474.34 Acres, No. 12,492 At Law*, fixing the 15th day of July, 1935, as the date for the surrender of possession, and this order found that title to the said tract of land had become vested in the United States and the right to just compensation therefor had become vested in those entitled thereto. Subsequently James Thompson and wife have applied for and accepted the sum of \$163.34 in full satisfaction and payment for their undivided one-half interest in the lands described in paragraph 7 hereof.

10. Diligent and repeated efforts have been made by this petitioner to avoid the expense and delay of this litigation, both to it and to the defendants, by the purchase of the lands described in paragraph 7 hereof, but it has been impossible to arrive at a purchase-price basis satisfactory to Gordon T. Carey.

11. Wherefore, your petitioner prays that this Honorable Court will take jurisdiction of this cause and make and have entered all such orders, judgments and decrees as may be necessary to bring all of the known owners of the said lands and area be-

fore this Court and to make all unknown persons having any interest therein parties defendant hereto, and will appoint commissioners to appraise and fix the value of said land and the amount of compensation which the owners thereof are entitled to for its appropriation, and all such other and further orders, judgments and decrees as may be necessary to award it the possession of [53] the area hereinabove described, and that the absolute title in fee simple to the said area be and thereby vest in the United States of America and divest it out of all other persons.

UNITED STATES OF
AMERICA,

s/ By CARL C. DONAUGH

United States Attorney for
the District of Oregon

s/ J. MASON DILLARD

Assistant United States At-
torney

(Duly Verified by J. Mason Dillard.) [54]

United States of America

District of Oregon—ss.

I, J. Mason Dillard, Assistant United States Attorney for the District of Oregon, hereby certify that I have made service of the foregoing Amended Petition For Condemnation on the defendant, Gordon T. Carey, by depositing in the United States Post Office at Portland, Oregon, on the 27th day of January, 1937, a duly certified copy thereof, enclosed in an envelope, with postage thereon prepaid,

addressed to L. A. Liljeqvist, Attorney at Law,
Marshfield, Oregon, attorney for said defendant.

s/ J. MASON DILLARD

Assistant United States At-
torney

[Endorsed]: Filed January 27, 1937. [55]

And Afterwards, to wit, on the 27th day of Janu-
ary, 1937, there was duly Filed in said Court, an
Amended Petition For Condemnation of Mary A.
George tract, in words and figures as follows, to wit:
[56]

United States of America
In the United States District Court
for the District of Oregon
No. L 12492 At Law

UNITED STATES OF AMERICA,
Petitioner,

vs.

177.38 Acres, more or less, of land in Harney
County, Oregon; and Stacy D. George and
Betty M. George, his wife; William J. George
and Edna George, his wife; Anna George Carey
and Harry A. Carey, her husband; Eliza A.
George Shoemaker and E. P. Shoemaker, her
husband,

Defendants.

AMENDED PETITION FOR CONDEMNATION
AS TO WILLIAM J. GEORGE, ET AL.

To the Honorable, the Judges of the United States
District Court for the District of Oregon:

On the 14th day of June, 1935, there was filed in this court a Petition for Condemnation entitled, United States vs. 3474.34 Acres, more or less, of land in Harney County, Oregon, No. 12,492 At Law, including, with other lands, the land hereinafter described; a supplement thereto was filed on July 19, 1935, and on the 25th day of January, 1937, this court permitted the severance of the said hereinafter-described tract of land from said proceeding, and permitted the filing of this amended petition for condemnation.

This amended petition of the United States, by Carl C. Donough, United States Attorney for the District of Oregon, respectfully shows that:

1. This petition is filed under the authority and provisions of Acts of Congress entitled: "An Act for the Relief of Unemployment Through the Performance of Useful Public Work, and for Other Purposes", approved March 31, 1933 (Chap. 17, 48 Stat. 22), as continued to March 31, 1937, by Section 14 of the Emergency Relief Appropriation Act for 1935 (Pub. Res.—No. 11—74th Congress); [57] the Fourth Deficiency Act, Fiscal Year 1933" (Chap. 100, 48 Stat. 274, 275) and pursuant to Executive Order No. 6724, dated May 28, 1934, authorizing the purchase or rental of land for emergency conservation work.

2. By the Act for the Relief of Unemployment Through the Performance of Useful Public Work (48 Stat. 22) Congress declared a threefold purpose, namely: (a) to relieve the acute condition of widespread distress and unemployment; (b) to

provide for the restoration of the country's depleted natural resources; and (c) the advancement of an orderly program of useful public works. The President was thereby authorized to utilize existing departments, including the Department of Agriculture, to provide employment in the construction of public works. Congress thereby enumerated several types of work to be done, including (1) forestation of lands; (2) prevention of forest fires; (3) prevention of floods; (4) prevention of soil erosion; (5) control of plant pests; (6) control of diseases; (7) construction of paths; (8) construction of trails; (9) construction of fire lanes; and other work of the general character enumerated. The characteristics of the specified types of work, and of other work so authorized to be done, were that they were; (a) to relieve unemployment; (8b) to restore depleted natural resources, and (c) to be useful public works. The work was authorized to be done, among other places, in national parks, in national forests, on Government reservations, and upon lands to be acquired by purchase, donation, condemnation, or otherwise. The term "Government reservation" as used in this Act included Lake Malheur Reservation established by Executive Order No. 929, dated August 18, 1908, located in Harney County in the State of Oregon.

3. Section 3 of this Act (48 Stat. 22) authorized the acquisition of lands as follows: [58]

"For the purpose of carrying out the provisions of this Act * * * the President, or the head of any

department or agency authorized by him to construct any project or to carry on any such public works, shall be authorized to acquire real property by purchase, donation, condemnation, or otherwise, * * *."

4. Under this Act (48 Stat. 22), and by authority of the President, the Secretary of Agriculture has duly adopted an emergency conservation works project for the improvement of the Lake Malheur Reservation. This project includes the construction of dikes; the building of water-control structures; the conservation of water; the control of flood-waters; the construction of truck trails; food and cover planting; fire protection; and the building of nesting islands to provide additional food and cover for waterfowl. One of the largest dikes being constructed on the Lake Malheur Reservation is the Cole Island Dike, which is essential in order to prevent the spreading out and evaporation of the inadequate supply of available water. This dike is being elevated and a truck trail will be built thereon for servicing the control structures and shortening patrol routes. It will be so elevated as to allow the truck trail thereon to be used at all times regardless of flood-water conditions within the Reservation. Approximately 75 miles of additional truck trails are to be constructed around the exterior boundaries of the Reservation for patrol and fire-prevention purposes. Four look-out towers are to be erected for fire protection and patrol purposes. More than 37 miles of fencing is to be erected and maintained. Open ditches and earth

embankments are to be constructed for water-control purposes. Several thousand acres are to be planted with trees, and large areas within the Reservation are to be planted for the production of food and cover for nesting waterfowl. Two emergency conservation works camps already have been established to carry on this work, and approximately 400 men have been and will be employed in the improvement of the Lake Malheur Reservation. This program of improvement is effective to relieve unemployment, restore depleted natural resources, and will result [59] in the construction of useful public works.

5. The tract of land described in Paragraph 7 hereof is requisite and necessary to be fully vested in the United States of America, free and clear of all outstanding claims of ownership, for the reason that a part of said emergency conservation work is necessary to be done thereon, or because the said land will be affected thereby. The public use for which the said lands are now required is the accomplishment of the emergency conservation works project herein described, but the said lands are also to be used as a part of the Lake Malheur Reservation for the restoration and conservation of migratory birds in furtherance of the objects of the Migratory Bird Treaty (39 Stat. 1702), the Migratory Bird Treaty Act (40 Stat. 755), the Migratory Bird Conservation Act, (46 Stat. 1222), and for such other public uses as may be authorized by the Congress or by Executive Order.

6. In the opinion of the Secretary of the United

States Department of Agriculture it has become necessary and advantageous to the United States Government to acquire all outstanding right, title, claim and interest in and to the lands described in Paragraph 7 hereof by condemnation under judicial process. The Secretary of the United States Department of Agriculture has duly made application to the Attorney General of the United States to commence proceedings for the condemnation of any outstanding right, title, claim and interest in the land described in paragraph 7 hereof, the Attorney General of the United States has duly instructed the United States Attorney for the District of Oregon to institute proceedings for the condemnation thereof; and these proceedings are duly brought under instructions from the Department of Justice of the United States, and under the Act of Congress approved August 1, 1888, entitled, "An Act to Authorize the Condemnation of Land for Sites of Public Buildings, and for other Purposes" (35 Stat. 357) U.S.C.A. 357-358. [60]

7. The property sought to be acquired and appropriated by the United States of America for the purposes aforesaid is described as follows:

"The Mary A. George Tract (No. 16)—Lots 1, 2 and 3, Sec. 1; Lots 1, 2, 6, 7, 8 and 9, Sec. 2, T. 26 S., R. 32 E.W.M. (North of Malheur Lake), containing 177.38 acres, more or less."

8. The property sought to be acquired does not include any rights which the defendants may have or claim as appurtenant to said lands because ripa-

rian thereto, and it does not include any rights, title, interest or estate of the defendants to lands or waters inside the Neal Survey lines, claimed by defendants to be meander lines of "Malheur Lake" as shown by and in accordance with the official plat of said Township 26 South, Range 32 E.W.M. (N.M.L.) as approved by the General Land Office and on file with the Surveyor General; and it also does not include any lands claimed to be relicted lands within the Malheur Lake Division, as described in the United States Supreme Court decree dated June 3, 1935 in re United States vs. Oregon recorded in Book 36, page 546, Harney County, Oregon, records.

9. The original petition for condemnation filed in re United States vs. 3474.34 Acres, No. L-12492, named as defendants all possible claimants to the Mary A. George Tract (No. 16) described in paragraph 7 hereof, and due notice has been given by summons and by publication as against all possible claimants to the said tract. There has been filed in the said original proceeding, by L. A. Liljeqvist, Esquire, their Solicitor, a motion in behalf of William J. George, Edna George, his wife; Anna George Carey and Harry A. Carey, her husband; Eliza O. George Shoemaker and E. O. Shoemaker, her husband; Stacy D. George and Betty M. George, his wife, with reference to an undivided interest in the said Mary A. George tract (No. 16). The said defendants so represented by L. A. Liljeqvist, Esquire, their solicitor, are made defendants in this separate supplemental and amended petition. The purpose of said motion was to require the United

States [61] of America to specify what additional lands were intended to be acquired other than Lots 1, 2 and 3, Sec. 1; and Lots 1, 2, 6, 7, 8 and 9, Sec. 2, T. 26 S., R. 32 E.W.M. (NML) containing 177.38 acres. There has been deposited in the Registry of the United States District Court for the District of Oregon the sum of Two Thousand One Hundred and Twenty-eight Dollars and Fifty-six cents (\$2,128.56), that being the estimated award for the said Mary A. George Tract (No. 16) as set forth in a declaration of taking filed therein. A portion of this estimated award so paid into the court has been withdrawn upon application of the heirs of Mary A. George and Adam F. B. George, both deceased, but there remains on deposit in the Registry of this Court a portion thereof to cover the right, title, claim and interest of the remainder of said heirs, which estimated award as to their undivided interest may be withdrawn by the defendants hereto upon application to and order by the United States District Court under the provisions of the Declaration of Taking Act (46 Stat. 1421) without prejudice to any claim that the said defendants may desire to make for more money than the said estimated award for said tract, and also without prejudice to any claim that they may desire to make as to ownership within the said Malheur Lake Division lying adjacent to the said Mary A. George Tract (No. 16).

10. Diligent and repeated efforts have been made by this petitioner to avoid the expense and delay of this litigation, both to it and to the defendants,

by the purchase of the lands described in paragraph 7 hereof, but it has been impossible to arrive at a purchase-price basis satisfactory to the defendants hereto.

11. Wherefore your petitioner prays that this Honorable Court will take jurisdiction of this cause and make and have entered all such orders, judgments and decrees as may be necessary to bring all of the known owners of the said lands and area before this Court and to make all unknown persons having any interest [62] therein parties defendant hereto, and will appoint commissioners to appraise and fix the value of said land and the amount of compensation which the owners thereof are entitled to for its appropriation and all such other and further orders, judgments and decrees as may be necessary to award it the possession of the area hereinabove described, and that the absolute title in fee simple to the said area be and thereby vest in the United States of America and divest it out of all other persons.

UNITED STATES OF
AMERICA.

By CARL C. DONAUGH,

United States Attorney for
the District of Oregon.

s/ J. MASON DILLARD,

Assistant United States At-
torney.

(Duly Verified by J. Mason Dillard.) [63]

United States of America,
District of Oregon—ss.

I, J. Mason Dillard, Assistant United States Attorney for the District of Oregon, hereby certify that I have made service of the foregoing Amended Petition for Condemnation on the within defendants by depositing in the United States Post Office at Portland, Oregon, on the 27th day of January, 1937, a duly certified copy thereof, enclosed in an envelope, with postage thereon prepaid, addressed to L. A. Liljeqvist, Attorney at Law, Marshfield, Oregon, attorney for said defendants.

s/ J. MASON DILLARD,
Assistant United States At-
torney.

[Endorsed]: Filed January 27, 1937. [64]

And Afterwards, to wit, on the 9th day of March, 1939, there was duly Filed in said Court, a Petition of Stacy D. George, et al. for the payment of money, in words and figures as follows, to wit: [65]

In the District Court of the United States for the
District of Oregon

In the Matter of the Acquisition by the United States of America of 3474.34 Acres, more or less, of land in Harney County, Oregon.

PETITION OF STACY GEORGE AND BETTY
GEORGE FOR PAYMENT OF MONEY ON
DEPOSIT.

To the Honorable Judges of the United States Dis-
trict Court for the District of Oregon:

The undersigned petitioners, Stacy D. George and Betty George, his wife, defendants in the above-entitled special proceedings respectfully show as follows:

1. By the Petition for Condemnation, Declaration of Taking and payment of the estimated award into the registry of this Court the United States of America on June 14, 1935, took title to the Mary A. George Tract (No. 16), containing 177.38 acres, more or less, of patented land in Harney County, Oregon, consisting of

Lots 1, 2 and 3 Section 1;

Lots 1, 2, 6, 7, 8 and 9 Section 2, Township
26 S., R. 32 E.W.M. (N.M.L.)

together with all rights to water thereunto appertaining. The said condemnation proceeding was described as intended to acquire all right, title, claim and interest of the owners of said patented lands in, to, on and over all adjacent lands within the Malheur Division of the Lake Malheur Reservation which might belong to them, but it has been stipulated and arranged that the claims of ownership asserted by the owners of an undivided four-ninths interest in the said Mary A. George Tract

of patented land, including the rights of these petitioners, if any, shall be determined in the receivership proceedings now pending in this Court entitled "United States vs. Otley and others" E-96 77. [66]

2. These petitioners now elect to accept one-ninth of the estimated award of \$2,128.56, deposited in the registry of this Court as full and just compensation to them for the taking of their entire ownership in the said patented lands amounting to \$236.50, less \$13.20, deducted as their proportionate share of the taxes against said land, leaving \$223.30 to be paid to them without prejudice to any right or claim which they might ultimately have for additional compensation in the event they are awarded any ownership within the Malheur Division of the Lake Malheur Reservation. As to their undivided one-ninth interest in said patented land they represent and warrant that they are the only persons entitled to be compensated therefor; that there are no mortgages, judgments or other liens against their interest therein and that there are no taxes due and exigible against said land which are not covered by the \$13.20 which is to be retained by the Government to cover such taxes as may have been due at the time when the title vested in it in these proceedings.

Wherefore these petitioners pray that this Court will direct the Clerk of the United States District Court for the District of Oregon to make payment of the funds now on deposit in the registry of this Court in this cause in the following manner: \$223.30

to be paid to Stacy D. George and Betty George and the check to be mailed to Stacy D. George at Klamath Falls, Oregon.

STACY D. GEORGE,
BETTY GEORGE.

(Duly Verified by Stacy D. George and Betty George.)

[Endorsed]: Filed March 9, 1939. [67]

And Afterwards, to wit, on Thursday, the 9th day of March, 1939, the same being the 4th Judicial day of the Regular March, 1939, Term of said Court; present the Honorable James Alger Fee, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [68]

In the District Court of the United States for the
District of Oregon

UNITED STATES OF AMERICA,

Petitioner,

vs.

3474.34 Acres, more or less, of land in HARNEY
COUNTY, OREGON; HARNEY COUNTY,
et al.,

Defendants.

ORDER FOR PAYMENT

This Matter coming on for hearing, upon Petition of Stacy D. George and Betty George, his wife, the owners of an undivided one-ninth interest in and to the following described tract of land, to-wit:

Lots One (1), Two (2) and Three (3), Section One (1); Lots One (1), Two (2), Six (6), Seven (7), Eight (8) and Nine (9), Section Two (2), Township Twenty-six (26) South, Range Thirty-two (32) E.W.M. (N.M.L.)

and defendants in the above-entitled action, for payment of their undivided interest in the purchase price of this land as described in the Petition for Condemnation in this cause, and it appearing to the satisfaction of the Court that on the 14th day of June, 1935, the United States of America filed its Petition for Condemnation of the land in which said defendants have an undivided one-ninth interest, in Harney County, Oregon, hereinabove described, and on the same day M. L. Wilson, Acting Secretary of Agriculture of the United States, acting in such capacity and duly authorized, filed a Declaration of Taking in the above-entitled proceeding, taking the hereinabove described lands in which the defendants have an undivided one-ninth interest, in fee for the use and benefit of the United States, and pursuant thereto a Judgment was rendered on the Declaration of Taking, finding that the United States had complied with the provisions of the Act of Congress approved February 26, 1931 (46 Stat. 1421; 40 USCA 258a), and that the title to all of the lands described in said Declaration of Taking has become vested in the United States of America, and it [69] further appearing to the satisfaction of the Court from said Petition for Payment for said lands and from the statement

of counsel for the United States in said proceedings that the said Stacy D. George and Betty George are entitled to an undivided one-ninth interest in and to the purchase price of the parcel of land described in this Order.

It Is Therefore Ordered that G. H. Marsh, Clerk of the United States Court for the District of Oregon, be and he is hereby directed to pay from the funds deposited in the Registry of the Court for that purpose in the above-entitled proceeding to Stacy George and Betty George, his wife, the sum of \$223.30, being their undivided one-ninth interest in \$2,128.56 (\$236.50), less \$13.20, their proportionate share of taxes.

JAMES ALGER FEE,
District Judge.

[Endorsed]: Filed March 9, 1939. [70]

And Afterwards, to wit, on the 22nd day of August, 1939, there was duly Filed in said Court, an Answer of Gordon T. Carey to Amended Petition, in words and figures as follows, to wit: [71]

[Title of District Court and Cause.]

ANSWER OF GORDON T. CAREY TO PETITIONER'S AMENDED PETITION IN CONDEMNATION

Comes now Gordon T. Carey and for answer to

petitioner's amended petition in the above entitled cause, denies and alleges as follows:

1.

Denies each and every allegation and statement made in Paragraphs I to X, inclusive, of said amended petition, except as admitted or alleged in the further and separate answer herein.

FURTHER AND SEPARATE ANSWER

For a further and separate answer to the said amended petition, said Gordon T. Carey alleges as follows:

I.

That he is the owner of an undivided one-half interest in the lands described in the amended petition as Lots 8 and 10 and the West Half of Lot 5, of Section 19, T. 25, S.R. 33 E.W.M., containing 46.67 acres of land.

II.

That said lands above described are that part of said lots above the Meander Line of Malheur Lake. That the elevation of the waters of said Malheur Lake are about four (4) feet higher in the high water season of the year than such waters are at the low water season of the year. That the high water season of Malheur Lake occurs in the spring of the year when the waters of said lake flow out over the Meander Line at the premises above described and irrigate and saturate the lands above described. That during the summer months the waters of said lake recede to a point below the said Meander Line and said lands above

describe, by [72] reason of having been flooded and irrigated as aforesaid from said Malheur Lake, produce grass, hay and other agricultural crops.

III.

That the area below and within the said Meander Line has, for many years, produced a large amount of feed for ducks and other water fowl and each year thousands of ducks and other water fowl are attracted to the said Malheur Lake and remain there and feed upon the lake and surrounding lands. That many of such ducks and other water fowl come upon and fly over the lands heretofore described, and during the open or hunting season of each year, the lands of the defendant's, above described, are valuable as a hunting ground and as a duck-shooting ground.

IV.

That since the petitioner herein secured possession of the above described lands by order of this Court in this case, the petitioner has constructed a large dyke across the said Malheur Lake for the purpose of keeping the waters of said Malheur Lake from reaching or overflowing the said lands above described, and for the further purpose of preventing the waters of said lake from reaching or overflowing that part of Malheur Lake abutting or adjoining the said lands. Prior to the construction of said dyke by the petitioner, the lands above described were valuable as grass, hay and agricultural lands, as well as valuable as a hunting or duck-shooting ground.

V.

That said lands were, at the time the petitioner took possession of the same, and at the time of the construction of said dyke as aforesaid, of the fair, reasonable and market value of \$30.00 per acre, or the sum of \$1,422.10, and that the undivided one-half interest in said lands of this defendant was at said time of the value of \$711.05.

Wherefore, defendant prays that it be adjudged that his interest in the said lands, at the time of taking by the petitioner, was of the value of \$711.05, and that he have judgment against the petitioner therefore, together with interest thereon at the rate of six per cent per annum from June 14, 1935.

/s/ J. W. McCULLOCH

/s/ R. M. DUNCAN

Attorneys for Defendant. [73]

(Duly Verified by Gordon T. Carey.)

State of Oregon

County of Multnomah.—ss.

Service of the foregoing answer of Gordon T. Carey is hereby accepted this 22nd day of August, 1939, by receipt of a copy of said answer certified by John W. McCulloch, one of the attorneys for the defendant, Gordon T. Carey.

J. MASON DILLARD,

Assistant United States At-
torney

One of Attorneys for Plain-
tiff.

[Endorsed]: Filed August 22, 1939. [74]

And Afterwards, to wit, on the 12th day of September, 1939, there was duly Filed in said Court, an Answer of William J. George et al. to Amended Petition, in words and figures as follows, to wit:

[75]

[Title of District Court and Cause.]

ANSWER TO PETITIONER'S AMENDED PETITION IN CONDEMNATION

Come now Stacey D. George, Betty George, William J. George, Edna George, Anna George Carey, Harry Carey, Eliza A. Shoemaker and E. P. Shoemaker, and for answer to the petitioner's amended petition in the above entitled cause, state as follows:

1.

Denies each and every allegation and statement made in Paragraphs I. to X., inclusive, of said amended petition, except as the same may be admitted or alleged in the further and separate answer herein.

2.

Denies that petitioner seeks to secure the title or possession of the lands mentioned in said amended petition for any of the purposes set forth in said amended petition, or for any purpose except as stated and alleged in the further and separate answer herein.

FURTHER AND SEPARATE ANSWER

The defendants, Stacey D. George, Betty George, William J. George, Edna George, Anna George Carey, Harry Carey, Eliza A. Shoemaker and E.

P. Shoemaker, for a further and separate answer to said Amended Petition, allege: [76]

I.

That they are the owners of an undivided 4/9 interest in the lands described in the amended petition as "The Mary A. George Tract (No. 16) as Lots 1, 2 and 3 of Section 1, and Lots 1, 2, 6, 7, 8 and 9 of Section 2, T. 26, S. R. 32, E.W.M. (North of Malheur Lake) in Harney County, Oregon, containing 177.38 acres more or less", the same being that part of said Lots above the Meander Line as run by John H. Neal in the year 1895.

II.

That said above described lands border upon the Meander Line of Malheur Lake for a distance of approximately two miles. That said lands, in the form of a narrow ridge, extend into the waters of Malheur Lake for a distance of approximately $\frac{3}{4}$ of a mile.

III.

That the said Malheur Lake is a noted place for ducks and other water fowl; many thousand of ducks and water fowl gather upon and feed at said Malheur Lake each year and particularly during the open or hunting season for such water fowl.

IV.

That there is a natural and much-used fly-way for water fowl over the tract of land above described, and particularly, over that part of said

tract in the ridge above mentioned which extends into the waters of said Malheur Lake.

V.

That for many years the United States Government, through its bureaus and departments, has been acquiring, securing and reserving lands in Harney County, Oregon, to be used as, and which are used as, a Bird Refuge; that no hunting is allowed on said Bird Refuge and the public is excluded therefrom; that said Bird Refuge now consists of about 150,000 acres of land in and about Malheur Lake, Harney Lake and Blitzen Valley. Said Bird Refuge includes substantially all the lands in that part of the State of Oregon near or served by, water; that the boundary line [77] of said Bird Refuge is more than 170 miles long and with very few exceptions is now fenced, and numerous trespass notices displayed thereon; that many thousands of ducks, geese and other water fowl annually use said 150,000-acres Bird Refuge.

VI.

That the land above described as the "Mary A. George Tract" is not within the said Bird Refuge, and has always been, up to the time the Government gained possession thereof by order of this Court, the most desirable and most noted hunting ground and duck-shooting ground in the State of Oregon; that due to the fact that such a large area is within said Bird Reserve, and due to the further fact that the said Bird Reserve can be approached

from private lands at very few places, and due to the further fact that the lands above described are the only privately owned lands which extend into the waters of said bird reserve, said lands above described are extremely desirable and valuable as hunting ground.

VII.

That the only purpose of the petitioner in obtaining possession of said premises in this proceeding was to prevent the shooting or taking of ducks or other wild fowl on said lands, and to deprive the owners of said lands of the right and privilege of using the said lands for hunting and duck-shooting purposes.

VIII.

That said lands have some value as agricultural and grazing lands, but that the highest and best use of said lands is, and always has been, its location and use as a hunting ground, and for that purpose, the said lands are of the reasonable market value of One Hundred (\$100.00) Dollars per acre.

Wherefore, the defendants herein named pray that it be determined by this court that the reasonable market value of the premises described in the petition herein was, at the time the petitioner took possession thereof, and is now, the sum of \$100.00 per acre, or a total value of \$17,738.00; that defendants herein be decreed to have a $\frac{4}{9}$ interest in said lands and be [78] given a judgment against the petitioner for the sum of \$7,883.52, to-

gether with interest thereon at the rate of 6% per annum from June 14, 1935, until paid.

s/ J. W. McCULLOCH

s/ ROBT. M. DUNCAN

Attorneys for Defendants

(Duly Verified by William J. George.)

[Endorsed]: Filed September 12, 1939. [79]

And Afterwards, to wit, on the 20th day of September, 1939, there was duly Filed in said Court, a Motion of Gordon T. Carey for order for the payment of money, in words and figures as follows, to wit: [80]

In the District Court of the United States

For the District of Oregon

No. L-12492

IN THE MATTER OF THE ACQUISITION
BY THE UNITED STATES OF AMERICA
OF

3474.34 ACRES, MORE OR LESS, OF LAND
IN HARNEY COUNTY, OREGON

MOTION OF GORDON T. CAREY FOR
ORDER TO PAY MONEY ON DEPOSIT

To the Honorable Judges of the United States District Court for the District of Oregon:

Comes now Gordon T. Carey, by J. W. McCulloch and R. M. Duncan, his attorneys, and respectfully shows, as follows:

I.

That by petition for condemnation, declaration of taking, and payment of estimated award into the registry of this Court, the United States of America, on the 14th day of June, 1935, took title to the Gordon T. Carey tract of land (No. 31-A) described as Lots Eight (8) and Ten (10) and the west Half ($W\frac{1}{2}$) of Lot Five (5), Section Nineteen (19), Township Twenty-five (25) South, Range Thirty-three (33) E.W.M. in Harney County, Oregon, containing 46.67 acres, more or less, of land, estimated value at \$326.69.

II.

That by Paragraph VIII of the amended petition filed in said cause on the 27th day of January, 1937, the United States of America, the petitioner herein, filed an amended petition for condemnation in said cause in which it was stated in Paragraph VIII of said amended petition, as follows:

“The property sought to be acquired does not include any right which the defendant may have, or claim, as appurtenant to the said lands and those riparian thereto, and it does not include any right, title, interest or estate of the defendant to lands or waters inside the Neal survey lines, claimed by defendant to be meander lines of ‘Malheur Lake’, as shown by and in accordance with the official plats of said Township 26 South, Range 32 E.W.M., as approved by the General Land Office and on file with the [81] Surveyor General; and

it does not include any lands claimed to be relicted lands within the Malheur Lake Division, as described in the United State Supreme Court decree dated June 3, 1935, in re. United States v. Oregon, recorded in Book 36, page 546, Harney County, Oregon records.”

III.

That at the time of the taking by the United States, the said Gordon T. Carey was the owner of, and now is the owner of an undivided one-half interest in said tract. That the said defendant has filed an answer in said condemnation proceeding in which answer he denies that the amount deposited in the registry of the Court is a fair or just award for said lands so taken by the United States, and by such answer, said defendant has made demand for the amount such defendant claims is the reasonable value of said premises. That the said defendant desires to withdraw from the registry of the Court the amount so deposited by the Court, as herein stated, said amount to be applied on whatever amount is awarded said defendant in said condemnation proceeding.

That based upon the foregoing statement of facts, this Honorable Court is requested to make an order directing the Clerk of the United States District Court for the District of Oregon to make payment of the funds now deposited in the registry of this Court, to the said Gordon T. Carey, as follows:

Pay to the said Gordon T. Carey one-half the sum of \$326.69, or \$163.34.

J. W. McCULLOCH

R. M. DUNCAN

Attorneys for Defendant Gordon T. Carey

Please take notice that the foregoing motion will be on call of the motion calendar of the court, Monday, Oct. 2, 1939.

J. W. McCULLOCH,

of Attorneys for Defendants.

[Endorsed]: Filed September 20, 1939. [82]

And Afterwards, to wit, on the 20th day of September, 1939, there was duly Filed in said Court, a Motion of William J. George, et al. for an order for the payment of money, in words and figures as follows, to wit: [83]

[Title of District Court and Cause.]

MOTION OF WILLIAM J. GEORGE ET AL.,
FOR ORDER TO PAY MONEY ON DEPOSIT

To the Honorable Judge of the United States District Court for the District of Oregon:

Comes now William J. George and Edna George, his wife; Anna George Carey and Harry A. Carey, her husband; Eliza O. George Shoemaker and E. O. Shoemaker, her husband; Stacey D. George and Betty M. George, his wife, by J. W. McCulloch and

R. M. Duncan, their attorneys, and respectfully show as follows:

I.

By the petition for condemnation, Declaration of Taking, and payment of estimated award into the registry of this Court, the United States of America, on June 14, 1935, took title to the Mary A. George Tract (No. 16), containing 177.38 acres, more or less, of patented land in Harney County, Oregon, consisting of Lots One (1), Two (2) and Three (3) in Section One (1); Lots One (1), Two (2), Six (6), Seven (7), Eight (8) and Nine (9) in Section Two (2), Township Twenty-six (26), Range Thirty-two (32), E.W.M. (N.M.L.), together with all the rights of water thereunto appertaining.

II.

That on the 27th day of January, 1937, the United States of America, the petitioner in said condemnation proceeding, filed an amended petition for condemnation in said cause, in which it is stated in Paragraph IX of said amended petition, among other things, as follows:

“There has been filed in said original proceeding, by L. A. Liljeqvist, Esquire, their solicitor, a motion on behalf of William J. George, Edna George, his wife; Anna [84] George Carey and Harry A. Carey, her husband; Eliza O. George Shoemaker and E. O. Shoemaker, her husband; Stacey D. George and Betty, George, his wife, with reference to an undivided interest in the said Mary A. George tract (No. 16).

“The said defendants so represented by L. A. Liljeqvist, Esquire, their solicitor, are made defendants in this separate supplemental and amended petition. The purpose of said motion was to require the United States of America to specify what additional lands were intended to be acquired other than Lots 1, 2 and 3, Sec. 1, and Lots 1, 2, 6, 7, 8 and 9, Sec. 2, T. 26, S.R. 32, E.W.M. (N.M.L.), containing 177.38 acres. There has been deposited in the registry of the United States District Court for the District of Oregon, the sum of Two Thousand One Hundred and Twenty-eight Dollars and Fifty-six cents (\$2,128.56), that being the estimated award for the said Mary A. George tract (No. 16), as set forth in a declaration of taking filed herein. A portion of this estimated award so paid into Court has been withdrawn upon application of the heirs of Mary A. George and Adam F. B. George, both deceased, but there remains on deposit in the Registry of this Court, a portion thereof to cover the right, title, claim and interest of the remainder of said heirs, which estimated award as to their undivided interest, may be withdrawn, by the defendants hereto, upon application to and order by the United States District Court under the provisions of the Declaration of Taking Act (46 Stat. 1421), without prejudice to any claim that the said defendants may desire to make for more money than the said estimated award for said tract, and also without prejudice to any

claim that they may desire to make as to ownership within the said Malheur Lake Division lying adjacent to the said Mary A. George tract (No. 16)''

III.

That at the time of said taking by the United States the said William J. George and Edna George, his wife, were the owners of an undivided one-ninth interest in said tract of land; that at said time Anna George Carey and Harry A. Carey, her husband, were the owners of an undivided one-ninth interest in said tract; that Eliza O. George Shoemaker and E. O. Shoemaker, her husband, were at said time the owners of an undivided one-ninth interest in said tract, and that at said time Stacey D. George and Betty George, his wife, were the owners of an undivided one-ninth interest in said tract.

IV.

That the said parties have filed an answer in said condemnation proceeding, in which answer they deny that the amount deposited in the Registry of the Court is a fair or just award for [85] said lands so taken by the United States, and by such answer said parties have made a demand for the amount such parties claim is the reasonable value of said premises. That the parties herein desire to withdraw from the Registry of the Court, the amount so deposited by the Court as heretofore stated, said amount to be applied on whatever amount is awarded to said parties in said condemnation proceeding.

That based upon the foregoing statement of facts,

this Honorable Court is requested to make an order directing the Clerk of the United States District Court for the District of Oregon, to make payment of the funds now deposited in the Registry of this Court in this cause in the following manner:

(1) Pay to William J. George and Edna George one-ninth of \$2,128.56, or \$236.50;

(2) Pay to the said Anna George Carey and Harry A. Carey, the sum of \$236.50;

(3) Pay to the said Eliza O. George Shoemaker and E. O. Shoemaker the sum of \$236.50; and,

(4) Pay to the said Stacey D. George and Betty George the sum of \$236.50.

J. W. McCULLOCH

R. M. DUNCAN

Attorneys for the defendants William J. George, Edna George, Anna George Carey, Harry A. Carey, Eliza O. George Shoemaker, E. O. Shoemaker, Stacey D. George and Betty M. George.

Please take notice that the foregoing motion will be on call of the motion calendar of the court, Monday, Oct. 2, 1939.

J. W. McCULLOCH

of Attorneys for Defendants.

[Endorsed]: Filed September 20, 1939. [86]

And Afterwards, to wit, on the 4th day of December, 1940, there was duly Filed in said Court, a Motion of William J. George, et al. to vacate judgment on declaration of taking and to dismiss, in words and figures as follows, to wit: [87]

[Title of District Court and Cause.]

MOTION TO VACATE JUDGMENT ON DECLARATION OF TAKING AND FOR DISMISSAL OF PETITION.

Come now William J. George, Anna Carey and Eliza O. Shoemaker, the owners of an undivided three-ninth's interest in "The Mary A. George Tract (No. 16)", and comes now Gordon T. Carey, the owner of an undivided one-half interest in Tract (No. 31-A), (said tracts above mentioned being so designated and described in the Petition filed in said cause June 14, 1935) by J. W. McCulloch and Edwin D. Hicks, their Attorneys, and move the court for an order, judgment and decree as follows:

For an Order, Judgment and Decree annulling, vacating and setting aside the pretended order and judgment of this court in the above entitled cause, made and entered June 14, 1935, in which pretended order and judgment the court attempted to transfer to the United States, the title to a large tract of land in Harney County, Oregon, including the lands of these moving parties.

The said moving parties herein further move this

court for an order and judgment dismissing said petition so filed June 14th, 1935.

The motions, as hereinabove stated, are made on the ground that the petition in said cause does not state sufficient [88] facts to constitute a cause of action, and that the said petition does not state sufficient facts to give the court jurisdiction to make the pretended order and judgment of taking, and that by reason thereof the court was and is without jurisdiction in said cause.

This motion is based upon the records and files in this cause, which are particularly referred to in our brief filed herewith, in support of this motion.

J. W. McCULLOCH

EDWIN D. HICKS

Attorneys for William J. George, Anna Carey, Eliza O. Shoemaker, and Gordon T. Carey.

To the United States Attorney:

Notice is hereby given that on Monday, December 23rd, 1940, at the hour of 10:00 o'clock A.M., the foregoing Motion will be presented to the court for its consideration.

J. W. McCULLOCH

EDWIN D. HICKS

Attorneys for Motion.

State of Oregon,
County of Multnomah.—ss.

Due service of the within Motion to vacate judgment is hereby accepted in Multnomah County, Oregon, this 4th day of December, 1940, by receiving a

copy thereof, duly certified to as such by Edwin D. Hicks, of attorneys for Motion.

J. MASON DILLARD,
of Attorneys for Petitioner.

[Endorsed]: Filed December 4, 1940. [89]

And Afterwards, to wit, on Monday, the 28th day of September, 1942, the same being the 72nd Judicial day of the Regular July, 1942, Term of said Court; present the Honorable James Alger Fee, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [90]

In the District Court of the United States
For the District of Oregon
No. L-12492

UNITED STATES OF AMERICA,
Petitioner,

vs.

3474.34 ACRES, MORE OR LESS, OF LAND IN
HARNEY COUNTY, OREGON; HARNEY
COUNTY, ET AL,

Defendants.

ORDER VACATING JUDGMENT AND DEC-
LARATION OF TAKING

At this time, this matter coming on to be heard on the motion of William J. George, Anna Carey, Eliza O. Shoemaker and Gordon T. Carey, for an order and judgment of this court dismissing the

petition and vacating the declaration of taking and the judgment of this court entered in the within entitled cause on the 14th day of June, 1935; said moving parties appearing by J. W. McCulloch and Edwin D. Hicks, their attorneys, and United States of America appearing by Carl C. Donough, United States Attorney, and J. Mason Dillard, Assistant United States Attorney; and the court having thoroughly considered the questions raised in respect to said motion, and being fully informed in the premises; and it appearing to the court that said declaration of taking and the judgment and decree entered herein as aforesaid should be in all things set aside, vacated and held for naught; now therefore, it is

Ordered and Adjudged: that the judgment on declaration of taking, of this court entered in the within cause on the 14th day of June, 1935, be, and the same is hereby vacated, set aside and held for naught in its entirety, and such order and judgment is annulled; [91] and it is likewise

Ordered and Adjudged: that the declaration of taking filed in this proceeding be, and the same is hereby stricken from the files of this court; and it is further

Ordered and Adjudged: that the complaint and/or petition in the within cause be, and the same is hereby dismissed.

Dated this 28th day September, 1942.

JAMES ALGER FEE,

U. S. District Judge

[Endorsed]: Filed October 5, 1942. [92]

And Afterwards, to wit, on the 26th day of December, 1942, there was duly Filed in said Court, a Notice of Appeal, in words and figures as follows, to wit: [93]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: William J. George, Anna Carey and Eliza O. Shoemaker, and to J. W. McCulloch and Edwin D. Hicks, their attorneys:

You and each of you will take notice that the plaintiff, United States of America, appeals to the United States Circuit Court of Appeals for the Ninth Circuit from that certain order and judgment entered in the above-entitled cause and court and signed by the Honorable James Alger Fee, one of the judges of said District Court, on the 28th day of September, 1942, which judgment is to the effect that the petition for condemnation herein be dismissed and the judgment on the declaration of taking be vacated.

Dated at Portland, Oregon, this 26th day of December, 1942.

CARL C. DONAUGH

United States Attorney for the
District of Oregon

J. MASON DILLARD

Assistant United States
Attorney

[Endorsed]: Filed December 26, 1942. [94]

And Afterwards, to wit, on the 25th day of January, 1943, there was duly Filed in said Court, a Designation of Contents of Record in words and figures as follows, to wit: [95]

[Title of District Court and Cause.]

DESIGNATION OF RECORD

To: G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon:

Petitioner herein designates the entire record in the above-entitled cause as the record on appeal in the Circuit Court of Appeals for the Ninth Circuit.

Dated at Portland, Oregon, this 25th day of January, 1943.

CARL C. DONAUGH

United States Attorney for the
District of Oregon

J. MASON DILLARD

Assistant United States
Attorney

United States of America,
District of Oregon,—ss.

Service of the within Designation of Record is accepted in the State and District of Oregon, this 25th day of January, 1943, by receiving a copy thereof, duly certified to as such by J. Mason Dillard, Assistant United States Attorney for the District of Oregon.

EDWIN HICKS

Of Attorneys for Defendants.

[Endorsed]: Filed January 25, 1943. [96]

And Afterwards, to wit, on the 2nd day of February, 1943, there was duly Filed in said Court, a Transcript of proceedings before the Court on September 28, 1942, in words and figures as follows, to wit: [97]

[Title of District Court and Cause.]

Portland, Oregon, Monday, Sept. 28, 1942.
2:15 o'clock P.M.

Before:

Honorable James Alger Fee, Judge.

Appearances:

Mr. J. Mason Dillard, Assistant United States Attorney, appearing for the plaintiff United States of America.

Messrs. Edwin D. Hicks and J. W. McCulloch, attorneys for defendants William J. George, Anna Carey, Eliza O. Shoemaker and Gordon T. Carey.

TRANSCRIPT OF PROCEEDINGS

(During the calendar call on the above date the following occurred in regard to the above entitled cause:)

The Court: No. 12492, United States vs. 3474.34 acres of land in Harney County.

Mr. Dillard: It is my understanding, your Honor, there are about two properties or tracts represented by Mr. McCulloch which have not been disposed of, and it is my recollection that along in the Pendleton term of 1940, I think—I don't know whether it was '41 or '40—they were set for trial and taken off

on the representations of the defendants that they were not able to meet the expense of the trial. The proceeding has [99] never been fully closed. What counsel desire to do about the interests there I don't know. A deposit was made in court and a declaration of taking filed and title acquired by the Government as a result of that. That is my understanding about the status of this case.

Mr. Hicks: The case is a little bit complicated, your Honor, in respect to the suggestion that it be dismissed at this time unless some provision be made in respect to that decree. The case was filed on the 14th of June, 1935, over seven years ago, and at that time a declaration of taking was filed, and I believe the decree was entered as of the same date vesting title in fee simple to all of this land in the United States, and many of the parties did draw down that money that was deposited. But the decree covers land in respect to which the owners have received nothing at all, and the title to that land, as well as all of the land that we are concerned with here, is now under this decree vested in the United States. The result is that as the matter now stands and as it has stood for seven years these owners have had nothing except a decree against them vesting title in the Government and have drawn down no money. That is true as to a number of people or owners.

I might say this, your Honor: While I don't represent all of those people—I think there are three or four that Mr. McCulloch represents that I am helping with—the fact remains that that is the situa-

tion. If the case were dismissed now, of course, the owners might be confronted with the necessity of filing suit against the Government to obtain the vacation of that decree, or the matter might be complicated in some way through a dismissal of the case as such without making provision for vacation of the decree. Now what form it should take I don't know, but I just point out to your Honor that certainly if the case is dismissed some provision should be made to vacate the decree as to these parties in respect to whom the land has been taken by the Government without any compensation or without any suggestion of so doing.

Mr. Dillard: May I ask a question? It has been my impression that you and Mr. McCulloch had represented all of the remaining outstanding properties against us. [100]

Mr. Hicks: Mr. McCulloch will know about that. I know of I think four people, your Honor, who have not drawn down any of this money that was deposited in court. But as I conceive this condemnation proceeding the mere fact that a person draws down the money would not foreclose him of his rights to have his land litigated, and so forth, and that is what I am thinking of here. Now as to many of those people we do not represent them and we are not entitled to speak for them, but we do represent these four and possibly others. Mr. McCulloch would know. Does that answer your question?

Mr. Dillard: I want to know, if there are some you do not represent, who are they?

Mr. Hicks: Well, I think we represent only four of the owners who own land described in the complaint.

Mr. McCulloch: There are four tracts of land.

Mr. Hicks: Four different tracts of land. Of course, this is true, too, your Honor: It is our information that a number of people have given quitclaim deeds to the Government in respect to some of the land that is described there in the complaint, and of course as to it they would be covered. They would not be prejudiced or no harm would be done by this dismissal as to them. But that other situation is apparent there, and it would occur to me that, as regards all of these parties, they should have a chance to come in or what not and be heard because they have simply drawn down that money. Our people haven't. They would still be entitled to have the question adjudicated as to the value of the land.

Mr. Dillard: If your Honor please, if I am informed, the outstanding interests represented by Mr. McCulloch, the issues regarding those properties were set for trial and Mr. McCulloch represented his clients were unable to stand the expense of preparing for such a trial, and as a result it went off, I suppose pending what would become of the other case, and that is the way it has remained. Those owners who did not get their money did not get it, as I understand it, because they were not satisfied with the award made by the Government and still were not able, for one reason or another, to come into court. [101]

Mr. Hicks: An examination of the file will reveal that there is a motion pending there for dismissal of the case on certain grounds and likewise a motion for vacation of the decree, and I think that that motion is still pending and I don't believe it has ever been passed on, your Honor. Some suggestion was made that briefs should be filed at one time, but it was just sort of passed over, as I remember it, and I believe that the case is pending on that motion. I may be mistaken about it.

Mr. McCulloch: I will state my views about this case. I take this position—I can say what I think all right, but I cannot hear what the Court says to me, and if you have any remarks to make Mr. Hicks will hear them and translate them to me and I can probably answer the Court's question. This case now under consideration was filed in this court on the 14th day of June, 1935. It calls itself a suit for condemnation of lands. There are no parties defendant in the suit at all. The 3474 acres of land appear to be the defendants. A number of parties are described in the petition as owning these different tracts of land, and on the same day, June 14, 1935, there was filed in this court what is designated as a declaration of taking by the Secretary of Agriculture or some Assistant Secretary of Agriculture declaring that he is taking all of these lands under certain laws. At the same date the Court entered a decree and judgment in the case and recited the facts, and the last paragraph of that decree reads as follows: "It is Further Adjudged, Ordered and Decreed that the possession of

the above described property shall be delivered to the United States of America on or before the 15th of July, 1935." Then it says "and that this cause is held open for such other and further order, judgment or decree as is necessary in the premises." That is the last paragraph of the decree. The decree prior to that had designated that upon the filing of declaration of taking the fee simple title of the property left the defendants—if you call them defendants—left the land owners and vested in the Government at two o'clock P.M. on June 14th, 1935. Now that order and decree still stands. The lands of our clients were taken away from them on that date, and it has been out of their possession ever since. That decree is still in force and effect. [102]

Now we have filed a motion asking for two specific orders from the Court. One is that we are attacking the sufficiency of the petition as stating any cause of action at all, and we are asking that it be dismissed. The second is that we are asking that the Court enter an order or judgment or decree voiding this pretended order which was made on June 14th. These motions were filed something like two years ago. They were argued before this Court on the 2nd day of January of 1941, and they have been pending since. We fully explained our position at that time, and I think we made it clear that there is no valid petition for the taking of lands and nothing upon which a decree can be based. And, that being so, we say that the petition should be dismissed and that an order of the Court should be made annulling that decree. The decree itself keeps it

open for that very purpose or for some other purpose. It says it shall remain open for such other and further order or decree as the Court may see fit to make.

Now that briefly is our statement of this case. If there is any other angle to it that the Court would like to have me explain, I believe I understand all the different angles of the case. Counsel said something about the Otley case. There is no connection or relation between this case and the Otley case. The Otley case was a suit brought by the Government a considerable time later, and was for the purpose, as they at that time said, to quiet title to lands in the lake bed. The Circuit Court of Appeals said it was a suit to set aside certain patents that had theretofore been issued to lake beds. These lands do not have anything to do with the lake bed. They are taking patented lands above the meander line.

The Court: Has Washington said what they want to do with this case?

Mr. Dillard: No, your Honor, they have not. I did not mean to intimate any close relationship between it and the Otley case, but the only word I got on it was with regard to the Otley case, and that was the word that I conveyed to your Honor and to counsel last Monday.

The Court: Well, do you really want the case dismissed or what do you want done with it? [103]

Mr. Hicks: If the case could be dismissed, your Honor, so that the prayer of the motion would be granted and so these people would not be holding

their land with the Government holding a decree vesting title in it at the same time, we would have no objection to the dismissal of the case. Our only concern is to see that they have not been divested of their title and their rights without having received any compensation for it whatsoever. Of course, the Government has held that land for seven years. Whether they would want to ask later for some compensation for holding that land I don't know. None such is contemplated now, but they probably would not want to be foreclosed of their rights to raise that question at the proper time. But we have no objection to dismissal as long as their rights are saved and the record is not clouded, or, rather, the title is not clouded.

Mr. Dillard: It seems to me, your Honor, that there is considerable confusion will result from an out and out dismissal of it. I think counsel can speak in the interests of their people probably better than anybody else, but it is my recollection—I was not participating in this at the outset, but my recollection is that with only one or two exceptions the land owners agreed to the price deposited in court and accepted it and gave deeds of confirmation, as Mr. Hicks mentioned. Now whether their parties did right at this minute I can't tell. Probably counsel can. At this minute I am under the impression that these defendants here did give deeds of confirmation. Maybe I am mistaken.

Mr. McCulloch: None of them; none of them.

Mr. Dillard: They did not. All right; then I am mistaken about that. But as to other parties

there were deeds given. I recall in connection with the setting of the case at one time representation was made that the amount involved was not sufficient to warrant the expense on the part of the defendants, and one thing and another. I don't know that it would be possible, but possibly the thing could be best wound up by letting the defendants produce their testimony by deposition and clean it up that way as it was originally commenced, unless they want to take the position that they absolutely do not want to part with the lands in any proceeding. I [104] don't understand that they have been taking that position. As I recall it, their position was they were unable financially to properly defend the case and to present the evidence of values they wanted to present.

The Court: Of course, Mr. McCulloch says it has no relation to the other case. It does have a relation to the other case; it always has had a relation. I wouldn't have kept it on the docket this long if it hadn't had a relation to the other case. That is what it was kept here for. The assumption of the Court was that the decree in the Malheur Lake case would furnish a basis of settlement for all these cases. And now, since we have gotten that far, the Government just stops and doesn't do anything. I think that the most expeditious way to dispose of this case is to set it for trial, hold the motions in abeyance and set it for trial. If the Government doesn't show up, why, then I will give notice at that time that I will set aside the decree if they do not appear here. I think we can penalize them

in that way without getting in any further trouble.

Mr. Hicks: Would the Court rule on that motion in advance of setting for trial? My only thought is if the Court ruled a certain way in respect to that motion it might avoid the necessity of bringing witnesses here and going to trial preparation, and so forth.

The Court: Well, you know what is going to happen. The Government is not going to be here. At least I know that. We will find out beforehand—Mr. Dillard's office, of course, will try to be ready for trial and we may get some action from the Interior Department. I would much rather not put the Government in a place where they have to have that decree set aside upon the basis that you have alleged in your brief unless we have to, but if it becomes necessary, why, I will take that up at that time and I would like to have a representative of the Interior Department here.

Mr. Hicks: My inquiry was this, your Honor: If the Court is going to set the case down for trial at a certain time should we be prepared with our witnesses to show values?

The Court: Mr. Dillard, do you think if it is set down for a tentative date for trial you will get any action from Washington? [105]

Mr. Dillard: The only action that I can see is that of course we would have to be ready for trial. Is that what your Honor has in mind?

The Court: I want to know what they want to do. I haven't been able to find out for many years now what the department expects to do with this case.

Mr. Dillard: I understand they want the land. That is why they filed on it. That is all. That is my only understanding about that. There is no change of policy in respect to that that I know of. I have never seen anything to indicate that.

The Court: I was told by Mr. Biggs, who filed this case, that apparently the Government would like to abandon these proceedings at the present time. That was informal, so I am not sure that that is true, but that was his idea in one of our conferences, that they might want to abandon this thing.

Mr. Dillard: Well, I don't recall that. As to these particular tracts? Is that what he meant, as to these particular tracts?

The Court: The whole thing. Since the Malheur case did not work out they would like to quit.

Mr. Dillard: Well, I don't recall that at all.

The Court: Well, I don't think that that is a good solution, apparently. I don't seem to get anywhere with that. So I am just going to dismiss the case and set aside the decree right now. If they want to start another one, why, all right. I now sustain the motion for the defendants in the case and set aside the former decree, set aside the land taken by the Government, and dismiss the case. You may enter an appropriate order.

Mr. Hicks: So I may be clear, I assume your Honor wants us to draw the order?

The Court: Yes.

Mr. Hicks: We are just vacating the entire decree and everything in respect to it?

The Court: Yes.

Mr. Hicks: It will go right back where it was started from?

The Court: Yes. [106]

Mr. Dillard: Now may I inquire is that sustaining the motion to dismiss as to their particular clients and land owners?

The Court: No, I think it affects the whole decree.

Mr. Dillard: Just so I understand your Honor's intent—vacating the whole decree?

The Court: I am going to find out what is happening in this case. I will just dismiss it and then maybe something will happen. I haven't been able to get anything done for seven years. I don't know whether it is properly founded or not. I will probably be reversed in it, but I am willing to take that chance.

Mr. Dillard: Vacating the original order and decree based on the declaration of taking?

The Court: Yes, vacating the declaration of taking and the decree based on the declaration of taking.

(Thereupon proceedings relative to the above matter on said September 28, 1942, were concluded.) [107]

[Title of District Court and Cause.]

I, John S. Beckwith, hereby certify that I reported in shorthand the proceedings had in the above entitled cause on Monday, September 28, 1942, and thereafter prepared a typewritten transcript from my shorthand notes so taken, and the foregoing and attached 13 pages, numbered 1 to 13, both inclusive,

contain a full, true and correct record of all the oral proceedings had upon said hearing in said cause.

Dated at Portland, Oregon, this 16th day of November, 1942.

s/ JOHN S. BECKWITH
Reporter.

[Endorsed]: Filed Feb. 2, 1943. [108]

And afterwards, to wit, on the 4th day of March, 1943, there was duly Filed in said Court, an amended designation of contents of Record, in words and figures as follows, to wit: [111]

[Title of District Court and Cause.]

AMENDED DESIGNATION OF CONTENTS
OF RECORD ON APPEAL

The United States of America, appellant in the above entitled case, designates the following portions of the record to be contained in the record on appeal:

Filed

1. Petition, June 14, 1935.
2. Declaration of Taking, June 14, 1935.
3. Judgment on Declaration of Taking, June 14, 1935
4. Supplemental Petition, July 19, 1935.
5. Motion of Gordon T. Carey, et al., to make more definite, September 9, 1935.

6. Order of Severance as to Gordon T. Carey, et al., January 25, 1937.

7. Order of Severance as to William J. George et al., January 25, 1937.

8. Amended Petition for Condemnation as to Gordon T. Carey, January 27, 1937.

9. Amended Petitions for Condemnation as to William J. George et al., January 27, 1937. [112]

10. Petition of Stacy George and Betty George for payment of money on deposit, March 9, 1939.

11. Order to Pay Stacy George and Betty George money on deposit, March 9, 1939.

12. Answer of Gordon T. Carey to an Amended Petition, August 22, 1939.

13. Answer of Stacy D. George et al., September 12, 1939.

14. Motion of Gordon T. Carey for Order to pay money on deposit, September 20, 1939.

15. Motion of William J. George et al. for Order to pay money on deposit, September 20, 1939.

16. Motion of William J. George, et al., to Vacate Judgment on Declaration of Taking and for Dismissal of Petition, December 4, 1940.

17. Transcript of Proceedings on Motion to Vacate Judgment on Declaration of Taking and to Dismiss Petition, September 28, 1942.

18. Order Setting Aside and Vacating Judgment on Declaration of Taking, and Dismissing Petition, September 28, 1942.

19. Certified copy of docket entries, omitting names of defendants, February, 1943.

20. Certificate of Clerk of District Court as to

amount of deposit under declaration of taking now remaining in court, February, 1943.

21. Affidavit as to the cause of postponement of April 2, 1940, February, 1943.

22. Notice of Appeal, December, 1942.

23. Designation of contents of record on appeal, January 25, 1943.

24. Stipulation agreeing to amended designation, February, 1943.

25. This amended designation, February, 1943.

Respectfully submitted,

CARL C. DONAUGH,

United States Attorney [113]

Service of the within Amended Designation of Contents of Record on Appeal is hereby accepted at Portland, Oregon, this 4th day of March, 1943.

EDWIN D. HICKS.

[Endorsed]: Filed March 4, 1943. [114]

And afterwards, to wit, on the 6th day of April, 1943, there was duly Filed in said Court, an Affidavit of J. Mason Dillard, in words and figures as follows, to wit: [115]

[Title of District Court and Cause.]

AFFIDAVIT AS TO CAUSE OF
POSTPONEMENT

State of Oregon,
County of Multnomah—ss.

I, J. Mason Dillard, being first duly sworn, depose and say:

That at all time material to this cause I have been an Assistant United States Attorney for the District of Oregon and have been one of the attorney representing the Government in this proceeding;

That the records of the United States District Court for the District of Oregon reveal that this cause was held in abeyance for a long period of time without trial, for the reason that the same was related to an equity suit pending in that court—that is, United States vs. Henry Otley, et al;

That on the 28th day of September, 1942, the Honorable District Court for the District of Oregon made an order dismissing this action and setting aside the judgment on the declaration of taking which had theretofore been made;

That examination of the record in this cause indicates that said cause was set for trial at the Pendleton Term of the United States District Court for the District of Oregon, commencing in April of 1941; that I am apprehensive that the records of

the court do not completely reveal the circumstances and conditions under which the case was not then tried; that to the best of my recollection and belief the circumstances were as follows: [116]

That prior to the commencement of said term the Court notified the parties that the case would be set for trial; that the United States was at all times prepared for trial and made no objection to the Court regarding the proposed date thereof; that prior to the commencement of said court term, and in Portland, Oregon, counsel for the defendants advised that the defendants involved were not financially able to prepare their case and consequently could not engage in the trial of the same at the Pendleton term; that, to the best of my knowledge and belief, no formal representation was made by the defendants to the Court regarding these things and no formal motion to postpone the case was made on their behalf; that the case remained on the docket and was called at the commencement of the term of court, but by that time it was fully known and understood between the Court and the parties that the same could not be tried, and thereupon the Court requested of the United States Attorney a showing of some kind in writing why the case should be removed from the trial docket; that the defendants and their counsel were not in attendance upon the court, and therefore no request for such showing was made upon them; that thereupon I prepared the showing affidavit regarding the postponement of the trial, which was entered of record in this cause on or about the 5th of April, 1941;

That said showing was made at the request of the

Court, and I am now apprehensive that it may be misinterpreted as a formal application for postponement of the cause made on behalf of the Government; that it is my information and belief that at the time said showing was made all of the parties hereto and the Court were fully advised that the reason for the postponement of the cause was the representations by the defendants of their inability to be prepared for trial; [117]

That I make this affidavit for the record on appeal in this cause for the purpose of clarifying the meaning of the records of the United States District Court in the respects herein mentioned.

J. MASON DILLARD

Assistant United States
Attorney

Subscribed and sworn to before me this 2nd day of February, 1943.

WILLIAM H. HEDLUND

[Seal]

Notary Public for Oregon
My commission expires:

United States of America,
District of Oregon—ss.

Service of the within Affidavit is accepted in the State and District of Oregon this 6th day of March, 1943, by receiving a copy thereof, duly certified to as such by J. Mason Dillard Assistant United States Attorney for the District of Oregon.

J. W. McCulloch
Of Attorneys for
Defendants.

[Endorsed]: March 6, 1943. [118]

And Afterwards, to wit, on the 23rd day of March, 1943, there was duly Filed in said Court, a Stipulation as to record on appeal in words and figures as follows, to wit: [119]

[Title of District Court and Cause.]

STIPULATION AS TO RECORD

It Is Hereby Stipulated by and between the parties hereto, by and through their respective counsel, that the transcript of record to be certified to the United States Circuit Court of Appeals for the Ninth Circuit in the appeal of the above-entitled cause shall be in accordance with the Amended Designation of Record filed by the petitioner herein.

Dated at Portland, Oregon, this 23d day of March, 1943.

CARL C. DONAUGH

United States Attorney for
the District of Oregon

J. MASON DILLARD

Assistant United States
Attorney

Attorneys for Petitioner

J. W. McCULLOCH

Of Attorney for Defendants

[Endorsed]: Filed March 23, 1943. [120]

TRANSCRIPT OF DOCKET ENTRIES

in words and figures as follows, to wit: [123]

Filings—Proceedings

1935

- June 14 Filed Petition for condemnation of land.
June 14 Filed Declaration of Taking.
June 14 Filed & entered judgment on declaration of taking.
July 15 Filed praecipe U. S. Atty. for copy declaration of taking, judgment, furnished.
July 19 Entered order allow petitioner to file supplemental petition.
July 19 Filed supplement to petition for condemnation.
August 7 Filed praecipe of U. S. Atty. for Summons.
August 7 Issued Summons—handed to U. S. Atty.
September 9 Filed motion of Gordon T. Carey et al to strike.
September 9 Filed motion of Gordon T. Carey et al to make more definite.
September 10 Filed Answer of Myrtle Caldwell, et al.
August 30 Filed praecipe U. S. Atty. for copies, furnished.
September 13 Filed motion of Deft. Dunn to make petition more definite and certain.
September 12 Filed stipulation for time to October 1 for Harney County to plead.
September 24 Filed claim of State of Oregon.

- September 27 Filed Summons with Marshal's return of service.
- September 26 Filed stipulation for time for defts to plead.
- October 3 Entered order permitting Jesse L. Brightwell to appear of counsel for plaintiff.
- October 4 Filed & entered order for payment of Walla Creasman et al.
- October 4 Filed petition for payment of Walla Creasman et al.
- October 4 Filed petition for payment of Henry L. Bechtel.
- October 4 Filed & entered order for payment of Henry L. Bechtel.
- October 4 Filed petition for payment of Lavina Griffin et al.
- October 4 Filed & entered order for payment of Lavina Griffin et al.
- October 4 Filed petition for payment of Leona Creasman.
- October 4 Filed & entered order for payment of Leona Creasman.
- October 4 Filed petition for payment of W. J. Clarke.
- October 4 Filed & entered order for payment of W. J. Clarke.
- October 4 Filed petition for payment of James Thompson.
- October 4 Filed & entered order for payment of James Thompson.

- October 12 Filed petition for payment of Geo. T. McGrath et al.
- October 12 Filed & entered order for payment of Geo. T. McGrath et al.
- October 12 Filed petition for payment of Minnie Wooley.
- October 12 Filed & entered order for payment of Minnie Wooley.
- October 12 Filed petition for payment of Maggie C. Catterson.
- October 12 Filed & entered order for payment of Maggie C. Catterson.
- October 14 Filed affidavit of Edw. D. Hicks.
- October 14 Filed affidavit of Jesse L. Brightwell.
- October 14 Filed and entered order for non resident defts. to appear and plead and for publication.
- October 14 Filed praecipe U. S. Atty. for certfd. copies of order Oct. 14, furnished.
- October 17 Filed receipts of Leona Creason, Walter Creason, Mrs. Marguerite Grout, Mrs. Marguerite Grout as guardian, Lavina Griffin, Henry L. Bechtel, W. J. Clark, William R. Harris, James Thompson, Rose E. McGrath, et al.
- October 18 Filed affidavit of mailing.
- October 19 Filed Receipt of Minnie Wooley, Maggie C. Catterson.
- October 25 Filed Receipt of Mrs. Edith Steele.
- November 15 Entered order fixing Dec. 16 for hearing on motions.

- November 18 Filed petition of Annie Hamilton.
- November 18 Filed and entered order for payment of Annie Hamilton.
- November 18 Filed petition for payment of Emma A. M. Waterman.
- November 18 Filed & entered order for payment of Emma A. M. Waterman.
- November 21 Filed receipts of C. R. Bennett, Trustee.
- November 23 Filed receipts of Annie Hamilton.
- November 26 Filed receipts of Emma A. M. Waterman.
- November 25 Filed petition for payment of Mary Alice Simmons.
- November 25 Filed & entered order for payment of Mary Alice Simmons.
- December 11 Filed demurrer of Jim Gibson to petition for condemnation.
- December 18 Filed stipulation to dismiss as to Jim Gibson.
- December 18 Filed & entered order dismissing as to Jim Gibson.
- December 20 Filed petition for payment of Guy L. Hembree.
- December 20 Filed & entered order for payment of Guy L. Hembree.
- December 20 Filed petition for payment of John L. Hembree.
- December 20 Filed & entered order for payment of John L. Hembree.
- December 20 Filed Petition for payment of Georgia E. George et al.

- December 20 Filed & entered order for payment of Georgia E. George et al.
- December 20 Filed affidavit of publication. [126]
- December 24 Filed reply of U. S. to Answer of Myrtle Caldwell et al.
- December 28 Filed receipt of Guy L. Hembree.
- December 28 Filed receipt of Georgia E. George et al.

1936

- January 6 Filed motion of U. S. Atty. for order of severance.
- January 13 Record of hearing on motion of plaintiff for severance & for leave to file amended petition.
- January 13 Filed defendant Thos. T. Dunn's brief.
- January 13 Filed motion of plaintiff for order of default.
- January 13 Filed & entered order of default as to several defendants.
- January 20 Entered order denying motion of plaintiff for severance.
- January 23 Filed petition Harney County for payment.
- January 23 Filed & entered order for payment of Harney County.
- February 28 Filed motion of plaintiff for order of default.
- February 28 Filed & entered order of default re Thomas T. Dunn Tract.
- February 28 Filed plffs motion to dismiss as to Thomas T. Dunn.
- March 2 Filed & entered order dismissing as to

Thos. T. Dunn & directing clerk to repay monies.

- March 14 Filed receipt of U. S. Atty. for deeds lodged with petitions.
- April 13 Filed petition for payment of Walter P. George.
- April 13 Filed & entered order for payment of Walter P. George.
- June 11 Filed petition of Lee R. George for payment of money for lands.
- June 11 Filed & entered order to pay Lee R. George \$223.30.
- June 16 Filed Petition of Harney Co. for payment of taxes.
- June 16 Filed & entered order to pay Harney Co. taxes.
- June 17 receipt of Walter P. George.
- June 20 Filed receipt of Sheriff, Harney County.
- January 30 Filed receipt of Mary Alice Simmons.
- Jan. 27 Filed receipt of W. Y. King, Treas. Harney County.
- January 20 Filed receipt of John L. Hembree.
- June 29 Filed clerk's report re Thomas T. Dunn deposit.
- June 29 Filed & entered order authorizing Clerk to deposit \$1,511.57 in registry.
- July 6 Filed receipt of Lee R. George.
- July 10 Filed petition of Elbert F. George for payment.
- July 10 Filed ent. order to pay Elbert F. George \$223.30.

- July 10 Filed petition of Henry A. George for payment.
- July 10 Filed & ent. order to pay Henry A. George \$223.30.
- July 13 Filed & entered order to pay Thomas T. Dunn \$1511.57.
- July 13 Filed petition of U. S. Atty. for order to pay money to Thos. T. Dunn.
- July 14 Filed receipt of Elbert F. George for \$223.30.
- July 16 Filed receipt of Thomas T. Dunn for \$1511.57.
- July 30 Filed Answer of Harney County.
- October 6 Filed & entered order to pay Wm. Carroll, County Clerk, Harney County \$180.45.
- October 10 Filed receipt of Wm. Carroll.
- December 18 Filed petition for order to pay State Land Board.
- December 18 Filed petition for order to pay William Carroll, County Clerk.
- December 18 Filed & entered order to pay William Carroll, County Clerk.
- December 18 Filed petition for order appointing guardian ad litem.
Filed Entered order appointing guardian ad litem for Jean and Bill Horton.
- December 22 Filed receipt of W. M. Carroll for \$180.45.
- 1937
- January 25 Filed & entered order of severance as to Gordon T. Carey, et ux.

- January 25 Filed & entered order of severance as to William J. George et al.
- January 27 Filed Amended petition for condemnation as to Gordon T. Carey.
- January 27 Filed Amended petition for condemnation as to William J. George et al.
- January 28 Filed & entered order vacating order of Dec. 18, 1936 & to return check.
- September 23 Filed motion of Harney County to set for trial.
- September 27 Entered order to set for trial for Nov. 23, 1937.
- November 23 Record of trial, order to amend answer of Harney County.
- November 26 Filed & entered order on issues raised by Harney County.
- November 27 Filed transcript of proceedings, with exhibits 1, 2 and 3.

1938

- September 26 Filed stipulation re pre-trial, 46.67 acres and Gordon T. Carey.
- September 26 Filed demand of U. S. for jury trial.
- September 26 Filed stipulation re pre-trial 177.38 acres, and Stacy D. George, et al.
- September 26 Filed demand of U. S. for jury trial.

1939

- March 9 Filed docketed & entered order to pay Harney Co. \$1249.92 out of money in registry of Court. [127]
- March 9 Filed, docketed & entered order to pay State Land Board \$500. out of money in registry of Court.

- March 9 Filed, docketed Petitions of Stacy George and Betty George for payment out of money in registry of Court.
- March 9 Filed, docketed & entered order to pay Stacy George & Betty George \$223.30 out of money in registry of court.
- March 18 Filed docketed receipt of Harney County for \$1249.92.
- August 22 Filed docketed answer of Gordon T. Carey to amended petition.
- September 12 Filed docketed answer of Stacey D. George et al.
- September 20 Filed docketed motion of Gordon T. Carey for order to pay money.
- September 20 Filed docketed motion of Wm. J. George et al for order to pay money.
- 1940
- March 1 Docketed order to set for Pendleton 1940 Term.
- March 27 Docketed order denying application of plff. to strike from Pendleton calendar.
- April 4 Filed & docketed motion of ptff. for postponement of trial (George heirs).
- April 2 Entered & docketed order postponing trial (of U S v "2 George heirs").
- December 4 Filed & docketed motion of Wm. J. George et al to vacate judgment on declaration of taking and for dismissal of petition.
- December 4 Filed & docketed brief on foregoing motion.

1941

January 2 Record of hearing on motion of defts. to vacate judgment on declaration of taking and to dismiss petition, argued, brief from pttf.

1942

September 28 Docketed & entered Order setting aside & vacating judgment on the declaration of taking & "decree" & dismissing petition.

October 5 Filed order docketed & entered Sept. 28, 1942. [128]

CERTIFICATE OF CLERK OF MONEYS ON
DEPOSIT IN REGISTRY OF COURT

in words and figures as follows, to wit: [129]

United States of America,
District of Oregon—ss.

I, G. H. Marsh, Clerk of the United States District Court for the District of Oregon, do hereby certify that on June 15, 1935, in accordance with the Judgment on the Declaration of Taking, entered on June 14, 1935, in cause No. L-12492, United States of America vs. 3474.34 Acres, more or less, of Land in Harney County, there was deposited in the registry of said court the sum of \$32,227.26, and that there remains on this 25th day of March, 1943, on deposit

in the registry of the said court the sum of \$1390.43, in said cause.

Portland, Oregon, March 25, 1943.

G. H. MARSH,

G. H. Marsh, Clerk, United
States District Court For
the District of Oregon. [130]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

United States of America,
District of Oregon—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 130 inclusive, constitute the transcript of record on appeal from a Judgment of said Court in a cause therein numbered L-12492, in which the United States of America is plaintiff and appellant; and 3474.34 Acres, more or less, of land in Harney County, Oregon, Harney County, et al, are Defendants, and Gordon T. Carey, Stacey D. George, Betty George, William J. George, Edna George, Anna George Carey, Harry Carey, Eliza A. Shoemaker, and E. P. Shoemaker, her husband, are appellees; that said transcript has been prepared by me in accordance with the amended designation of contents of the record on appeal filed therein by appellant and in accordance with the rules of Court, and have included in said transcript as a part thereof a certifi-

cate of the Clerk of the amount of money on deposit in the registry of the court in said case; that I have compared the foregoing transcript with the original record thereof and that the foregoing transcript is a full, true and correct transcript of the record and proceedings had in said Court in said cause, as the same appear of record and on file at my office and in my custody, in accordance with the said amended designation.

I further certify that the cost of the foregoing transcript is \$5.00 for filing Notice of Appeal, and \$28.30 for comparing and certifying the within transcript, making a total of \$33.30, which has not been paid by appellant but is a constructive charge against the United States.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at Portland, in said District, this 26th day of March, 1943.

[Seal]

G. H. MARSH,

G. H. Marsh, Clerk. [131]

[Endorsed]: No. 10398. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Gordon T. Carey, Stacey D. George, Betty George, William J. George, Edna George, Anna George Carey, Harry Carey, Eliza A. Shoemaker and E. P. Shoemaker, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed March 31, 1943.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals for
the Ninth Circuit
No. 10398

UNITED STATES OF AMERICA,

Appellant.

vs.

HARNEY COUNTY, et al.,

Appellees.

STATEMENT OF POINTS TO BE RELIED
UPON ON APPEAL

The United States of America, appellant in the above-entitled case, intends to rely upon the following points on the appeal:

1. The District Court erred in vacating, setting aside and annulling the judgment on the declaration of taking.

2. The District Court erred in striking the declaration of taking from the files of the court.

3. The District Court erred in dismissing the petition for condemnation.

Respectfully submitted,

NORMAN M. LITTELL,

Norman M. Littell, Assistant
Attorney General.

CARL C. DONAUGH,

Carl C. Donough, United
States Attorney.

J. MASON DILLARD,

Assistant United States At-
torney.

United States of America,

District of Oregon—ss.

Service of the within Statement of Points is accepted this 23rd day of March, 1943, by receiving a duly certified copy thereof.

J. W. McCULLOCH,

Of Attorneys for Appellees.

[Endorsed]: Filed Apr. 17, 1943. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PORTIONS OF RECORD
TO BE PRINTED AS RECORD ON APPEAL

The United States of America, appellant in the above entitled case designates the following portions of the record and proceedings for printing the record on appeal in conformity with Rule 19(6) of this court.

Filed

1. Petition, June 14, 1935.
2. Declaration of Taking, omitting the plat and also omitting the description of the lands taken, substituting for the latter the following: [here follows the same description found in paragraph 3 of the petition], June 14, 1935.
3. Judgment on Declaration of Taking, omitting the description of the lands taken and substituting therefore the following: [here follows the same description found in paragraph 3 of the petition], June 14, 1935.
4. Supplemental Petition, July 19, 1935.
5. Motion of Gordon T. Carey, et al., to make more definite, September 9, 1935.
6. Order of Severance as to Gordon T. Carey, et al, January 25, 1937.
7. Order of Severance as to William J. George, et al, January 25, 1937.
8. Amended Petition for Condemnation as to Gordon T. Carey, January 27, 1937.

9. Amended Petition for Condemnation as to William J. George, et al, January 27, 1937.

10. Petition of Stacy George and Betty George for payment of money on deposit, March 9, 1939.

11. Order to Pay Stacy George and Betty George money on deposit, March 9, 1939.

12. Answer of Gordon T. Carey to an Amended Petition, August 22, 1939.

13. Answer of Stacy D. George, et al, September 12, 1939.

14. Motion of Gordon T. Carey for Order to pay money on deposit, September 20, 1939.

15. Motion of William J. George, et al., for Order to pay money on deposit, September 20, 1939.

16. Motion of William J. George, et al., to Vacate Judgment on Declaration of Taking and for Dismissal of Petition, December 4, 1940.

17. Transcript of Proceedings on Motion to Vacate Judgment on Declaration of Taking and to Dismiss Petition, September 28, 1942.

18. Order Setting Aside and Vacating Judgment on Declaration of Taking, and Dismissing Petition, September 28, 1942.

19. Certified copy of docket entries, omitting names of defendants.

20. Certificate of Clerk of District Court as to amount of deposit under declaration of taking now remaining in court.

21. Affidavit as to the cause of postponement, March 6, 1943.

22. Notice of Appeal, December 26, 1942.

23. Designation of contents of record on appeal, January 25, 1943.

24. Stipulation agreeing to amended designation, March 23, 1943.

25. Amended designation of contents of record on appeal.

26. This designation

Respectfully submitted,

CARL C. DONAUGH,

United States Attorney.

J. MASON DILLARD,

Assistant United States At-
torney.

United States of America,

District of Oregon—ss.

Service of the within Designation of Portions of Record to Be Printed is accepted this 23d day of March, 1943, by receiving a duly certified copy thereof.

J. W. McCULLOCH,

Of Attorneys for Appellees.

[Endorsed]: Filed Apr. 17, 1943. Paul P. O'Brien, Clerk.

